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ABSTRACT

Presented in this report is an account of the attempt made by the Director of the United States Office of Personnel Managment (OPM) to exclude the Planned Parenthood Federation of America (PPFA) from participation in the Combined Federal Campaign (CFC). The CFC is the annual charitable fundraising drive conducted among federal employees and military personnel. Topics addressed in the report include the development of the CFC, controversy concerning the admission of advocacy organizations in the CFC; conflict between the OPM and the PPFA during 1982, conflict between the OPM and the PPFA during 1983, questions the OPM required the PPFA to answer in an attempt to discover some technical flaw in their application, and problems relating to the existence of a double set of guidelines for accounting and financial reporting. The report concludes that women have a constitutionally protected right to terminate pregnancy through abortion and that the Director's effort to ban the PPFA on the basis of its support of that right is improper. Most of the report consists of 20 appendices containing related materials such as correspondence, memoranda, transcripts of proceedings, and records of court litigation. (RH)

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STUDY OF EFFORT TO EXCLUDE PLANNED PARENTHOOD FROM PARTICIPATION IN COMBINED FEDERAL CAMPAIGN

REPORT

PREPARED BY THE STAFF OF THE

SUBCOMMITTEE ON CIVIL SERVICE

OF THE

COMMITTEE ON

POST OFFICE AND CIVIL SERVICE

HOUSE OF REPRESENTATIVES

OCTOBER 28, 1983

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LETTER OF TRANSMITTAL

U.S. House of Representatives,
Committee on Post Office and Civil Service,
Subcommittee on Civil Service,
Washington, D.C., October 28, 1983.

Hon. William D. Ford,
Chairman, Committee on Post Office and Civil Service, U.S. House of Representatives, Washington, D.C.

Dear Mr. Chairman: Enclosed herewith please find a report, prepared by the staff of the Subcommittee on Civil Service, detailing the efforts of the Director of the Office of Personnel Management to exclude Planned Parenthood from participation in the Combined Federal Campaign. The report, written after extensive investigation and numerous interviews, is an accurate and straightforward account of an emotional and time-consuming conflict. The report was researched and written by Andrea Nelson of the Subcommittee staff.

As you know, the Subcommittee on Civil Service held in-depth hearings on the Combined Federal Campaign in 1979 and has closely monitored the charitable solicitation efforts within the Federal government since that time. After a Federal judge forced the Office of Personnel Management to restore Planned Parenthood to the Campaign last month, I asked my staff to gather all the relevant information on this issue. This report is the result of that inquiry.

I believe a history of the dispute over the last three years between the Office of Personnel Management and Planned Parenthood will be of interest to our colleagues and the public. For this reason, I respectfully request publication of this study, and its appendices, as a Committee Print.

With kind regards,
Sincerely,

Patricia Schroeder, *Chairwoman.*

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STUDY OF EFFORT TO EXCLUDE PLANNED PARENTHOOD FROM PARTICIPATION IN COMBINED FEDERAL CAMPAIGN

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1. INTRODUCTION

The Combined Federal Campaign (CFC) is the annual charitable fundraising drive conducted among federal employees and military personnel. It is the only authorized method for on-the-job solicitation of federal employees, and was established in 1961 to protect employees and agency managers from workplace disruptions due to frequent solicitations for contributions by various charitable agencies. The payroll deduction system provides employees with a convenient channel for contributing to charitable organizations. Indeed, the typical employee contribution made through the use of payroll deduction runs about three times as high as the typical cash contribution.

Consolidation of the various charitable solicitation campaigns within the federal workplace first occurred with the promulgation of Executive Order No. 10728 by President Dwight D. Eisenhower on September 6, 1957. Under Executive Order No. 10927, issued by President John F. Kennedy on March 18, 1961, operation of the CFC was transferred to the Civil Service Commission, now the Office of Personnel Management (OPM). The Director of OPM enjoys wide authority to decide which charitable organizations are allowed to participate in the CFC. Federal workplace charitable solicitation efforts were further regulated when President Ronald W. Reagan issued Executive Order 12353 on March 23, 1982, and Executive Order No. 12404 on February 10, 1983.

As the result of a series of hearings held in 1979 by the Subcommittee on Civil Service of the House Committee on Post Office and Civil Service, chaired by Rep. Patricia Schroeder of Colorado, Office of Personnel Management Director Alan K. Campbell issued revised guidelines for the CFC creating a new category for national domestic voluntary organizations, and relaxing slightly the eligibility criteria to permit broader participation. Controversy over which charitable organizations should be allowed to participate in the CFC has continued under the Reagan administration and the appointment of Dr. Donald J. Devine as Director of the Office of Personnel Management in March 1981.

2. DEVELOPMENT OF THE COMBINED FEDERAL CAMPAIGN

Prior to 1979, participation in the CFC was limited to four voluntary groups: (1) local United Ways or United Funds and member agencies; (2) the American Red Cross (where it was not a member agency of the local United Way); (3) National Health Agencies, which included many health research organizations; and (4) International Service Agencies, including the USO, Project HOPE, and Planned Parenthood-World Population.

Since 1979, the CFC has been the subject of intense controversy generated by efforts to change the underlying Executive order, numerous regulatory initiatives, and several major lawsuits. Throughout this period, the total amount of contributions solicited through the CFC has increased every year. Total campaign receipts have grown from $7.6 million in 1964 to approximately $101 million in 1982. The dispute has been focused almost exclusively on access to the CFC and the millions of dollars contributed by federal employees, as nontraditional and minority-oriented organizations sought the right to participate in the campaign and OPM fought to keep them out.

As controversy over eligibility for participation increased, an earlier controversy over the distribution of undesignated contributions receded into the background. The eclipse of this dispute occurred, in part, because distribution of undesignated contributions was delegated to non-governmental entities (primarily United Ways) at the local level and, in part, because additional encouragement was provied to employees to designate their contributions to specific charitable organizations. Still, the issue of fair distribution of contributions made to CFC, but not designated to a specific recipient, lingers in the background.

3. ADMISSION OF ADVOCACY ORGANIZATIONS

Concerned about allegation of coercion, restricted access, and inequitable distribution of undesignated funds, Rep. Schroeder chaired hearings on the CFC in October 1979. Upon completion of the hearings, a majority of members of the Civil Service Subcommittee wrote to Dr. Alan K. Campbell, then Director of the Office of Personnel Management, listing its findings and setting forth principles to guide the future conduct of the campaign. In sum, the principles were that the campaign should: (1) be run on the local level by rank and file federal employees; (2) provide more information to potential contributors about recipient groups; (3) contain clear and enforceable restrictions against coercion; (4) be opened up to permit participation by any group serving the needs of any deprived group in society; (5) no longer distribute undesignated contributions under the goal accomplishment/dollar base formula; and (6) contain tighter fiscal controls over the money collected. (See appendix 1.) Director Campbell issued revised rules for the CFC in April 1980 that incorporated some of the Subcommittee's recommendations.

In spite of these revisions, participation in the CFC remained limited to charitable organizations "providing direct services to persons in the fields of health and welfare service." (see the Manual on Fund Raising Within the Federal Service for Voluntary Health and Welfare Agencies, sec. 5.21) thus excluding non-profit advocacy organizations such as the NAACP Legal Defense and Education Fund, Inc. ("Inc. Fund"). The NAACP Inc. Fund challenged this limitation in Federal court, asserting that this "direct services" requirement was an unconstitutional infringement on its First Amendment right to engage in charitable solicitation. U.S. District Court Judge Gerhard Gesell agreed with the Inc. Fund and struck down the "direct services" requirement as unconstitutionally vague. (*NAACP Legal Defense and Education Fund, Inc.* v. *Campbell*, 504 F. Supp. 1365, D.D.C. 1981) Judge Gesell found that participation in the CFC was a First Amendment protected activity and that the government had failed to meet the strict standards requisite to limiting such protected activity.

As a result of the 1979 Subcommittee hearings and the *NAACP Inc. Fund* lawsuit, participation in the CFC was expanded in 1981 to include a host of non-profit advocacy organizations. A number of these organizations then applied and participated in the 1981 and 1982 campaigns in the "National Service Agencies" category.

Whether it was because Dr. Devine knew that several of these organizations advocated positions which differed from the Reagan administration's on the responsibility of the Federal Government to provide basic human services to the poor and members of minority groups, or because he thought that it would be inappropriate to allow charitable funds to go to "advocacy" groups, Director Devine concluded that charitable organizations which sought to achieve their purpose of aiding the poor and needy through influencing administrative rulemaking, legislation, and litigation, did not belong in the CFC.

On October 22, 1981, Dr. Devine submitted to the White House a proposed new Executive order intended to limit eligibility for participation in the CFC to voluntary health and welfare organizations that "actively conduct health and welfare programs and provide services to individuals" and to stop in its tracks the move to extend eligibility to advocacy organizations. Section 3 of the proposed order was drafted to exclude groups that spent even one percent of their income on lobbying and other proscribed activities. Opposition to the proposed order was so intense that it was withdrawn. President Reagan evidently decided not to make substantial changes in the operation of the CFC and on March 23, 1982, issued Executive Order No. 12353 which retained the language "such national voluntary health and welfare agencies and such other national voluntary agencies as may be appropriate" contained in President Kennedy's original order.

Undeterred by this temporary setback, Dr. Devine issued proposed regulations implementing Executive Order No. 12353 on May 11, 1982. These regulations proposed major changes in the eligibility criteria for participation in the CFC and in the control over operations of local campaigns. The proposed rules had an eligibility requirement that national organizations provide direct services to individuals in all or most of the 50 states. This would have excluded many national minority organizations which service communities through a broad, social-oriented approach in contrast to the more traditional direct services. The proposed rule would not have allowed independent local charities to participate in the campaign after one year, requiring them to affiliate with a local United Way or other federation or be excluded from the CFC. Finally, the rule proposed turning the planning, management, and administrative authority for the campaign over to a "Principal Combined Fund Organization," which in most cases would be the local United Way, thereby barring the other major charity federations from participation in the distribution of undesignated funds.

Public outcry forced Dr. Devine to revise that section of the proposed rule requiring direct service to individuals in all or most of the 50 states. On July 6, 1982, final regulations were issued which allowed virtually any organization eligible to receive tax deductible contributions under section 501(c)(3) of the Internal Revenue Code to participate in the CFC. The wider choice of potential beneficiaries was clearly popular among federal employees because the Fall 1982 CFC raised 7.5% more in contributions than the Fall 1981 campaign, despite a nationwide recession and rock-bottom morale within the workforce.

In spite of the campaign's sucess in obtaining contributions to both the traditional health and welfare charities and the newer advocacy organizations, Dr. Devine continued to press for restricted participation. On February 10, 1983, President Reagan issued Executive Order No. 12404 which eliminated the reference contained in previous orders to "such other national voluntary agencies as may be appropriate." The new order limited eligibility in two ways: (1) by imposing a direct health or welfare service requirement; and (2) by precluding the participation of advocacy organizations in the campaign. The order provided that,

> Eligibility for participation in the Combined Federal Campaign shall be limited to voluntary, charitable, health and welfare agencies that provide or support direct health and welfare services to individuals or their families. Such direct health and welfare services must be available to Federal employees in the local campaign solicitation area, unless they are rendered to needy persons overseas. Such services must directly benefit human beings, whether children, youth, adults, the aged, the ill and infirm, or the mentally or physically handicapped. Such services must consist of care, research or education in the fields of human health or social adjustment and rehabilitation; relief of victims of natural disasters and other emergencies; or assistance to those who are impoverished and therefore in need of food, shelter, clothing, education, and basic human welfare services.

Exec. Order No. 12404, sec. 1, 48 Fed. Reg. 6685 (1983). The order made explicit its intention to exclude advocacy organizations from the CFC:

> Agencies that seek to influence the . . . determination of public policy through . . . advocacy, lobbying, or litigation on behalf of parties other than themselves shall not be deemed charitable health and welfare agencies and shall not be eligible to participate in the Combined Federal Campaign.

Litigation ensued immediately. In a decision issued on July 15, 1983, U.S.D.C. Judge Joyce Hens Green ruled that exclusion of the advocacy organizations because of their controversial nature, which Dr. Devine had cited as the motivating factor behind the new Executive order, was unconstitutional as an impermissible content-based restriction. (*NAACP Legal Defense and Education Fund, et al.* v. *Devine*, No. 83-0928, D.D.C., July 15, 1983.) (See appendix 2.) Dr. Devine was permanently enjoined from excluding the legal defense funds that had filed the suit from participating in the CFC. Publicly Dr. Devine insisted that the court order applied only to the named plaintiffs to the suit, but privately he acknowledged that any attempt to exclude other similarly situated advocacy organizations would be defeated in court and later informally agreed not to exclude other charitable organizations from the 1983 CFC solely because they were "advocacy" groups rather than "direct service health and welfare" agencies.

The Administration has appealed the decision of the Federal District Court in the *NAAP LDEF* litigation. Oral arguments are set for early November 1983.

4. OPM v. PLANNED PARENTHOOD, 1981–1982

Dr. Donald J. Devine, formerly an associate professor of government and politics at the University of Maryland, served in the Reagan presidential campaign and was subsequently appointed Director of the Office of Personnel Management. Prior to his appointment to federal service, Dr. Devine was active in the anti-abortion movement as director of the Life-PAC group, and in his position as the government's top personnel official has spearheaded efforts to bar government health insurance plans from paying for abortions by federal employees and to eliminate Planned Parenthood from the CFC.

Planned Parenthood Federation of America (PPFA) is an umbrella organization incorporated as a 501(c)(3) nonprofit federation of 190 separately incorporated local domestic affiliates. PPFA is the nation's largest charitable organization devoted to family planning and has participated in the CFC since 1968. Planned Parenthood-World Population is a trademark and the CFC designation for the international health and family planning activities directed by PPFA and its international assistance component, Family Planning International Assistance. The International Planned Parenthood Federation is a worldwide federation of voluntary family planning organizations of which PPFA is one of the larger affiliates. Local Planned Parenthood agencies provide educational, medical, and counseling services to persons seeking medical advice and assistance with family planning, contraception, and pregnancy. Thirty-nine local CFCs have United Ways listing Planned Parenthood as a member organization. In those 39 campaign areas, PPFA does not participate as a separate entity.

Dr. Devine's animosity toward Planned Parenthood is a source of considerable pride to him. At the hearing convened to examine Planned Parenthood's application to participate in the 1983 CFC, the director stated:

> Everybody knows where I stand in regard to the kind of practices that Planned Parenthood does. You promote abortions; I think that's detestable. I think in a just world, you'd have nothing to do with a charitable drive.

In a May 1981 *Washington Star* interview, Dr. Devine said he was considering dropping Planned Parenthood from the CFC. On June 9, 1981, Dr. Devine issued a memorandum of eligible organizations and revealed his strong desire to find a technical reason to exclude PPFA from the campaign. Nonetheless, Planned Parenthood was admitted to the 1981 CFC with Dr. Devine noting that Planned Parenthood was not the only organization to fail to use the accounting standards specified in the CFC regulations. (See appendix 3.)

Dr. Devine's October 22, 1981, proposed Executive order singled out Planned Parenthood for exclusion. Section 3(h) of the proposed order stated:

> As used in this Order, the term "eligible voluntaary health and welfare organization" shall mean an organization: (h) that does not provide any abortions, euthanasia, or abortion-related or euthanasia-related services or counseling, or any referrals to other agencies or organizations that provide such abortion-related or euthanasia-related services or counseling;

As noted earlier, President Reagan chose not to accept this draft order and on March 23, 1982, promulgated a new Executive order essentially reenacting the Kennedy order.

In 1982, Devine admitted Planned Parenthood to the CFC over the contrary recommendation of his eligibility committee because he could find no technical criteria on which to exclude it. Dr. Devine stated:

> As much as I agree with their view that Planned Parenthood, because of its role in promoting the detestable practice of abortion, should not receive funds by this route, I am legally bound to admit any organization which meets the technical membership requirements.

However, Dr. Devine reclassified Planned Parenthood as a National Service Agency at the last minute of the 1982 eligibility proceedings instead of allowing it to continue in the International Service Agencies category in which it had participated since 1968. The effect of the reclassification was to require Planned Parenthood to apply separately to each of the 550 local campaigns; it was eventually admitted to about 400. Organizations in the International Service Agencies category are automatically admitted to all local campaigns and share in the distribution of undesignated contributions. National Service Agencies generally do not share in the distribution of undesignated funds, which amount to approximately 35% of the total amount collected. PPFA filed a lawsuit challenging the reclassification; it was decided in Planned Parenthood's favor on August 31, 1983. (*Planned Parenthood Federation of America, Inc.* v. *Devine*, No. 82-2162, D.D.C., Aug. 31, 1983.) (See appendix 4.)

5. OPM v. PLANNED PARENTHOOD, 1983

Dr. Devine's extraordinary scrutiny of Planned Parenthood's application for the 1983 CFC, therefore, came as no surprise. A chronology of OPM's treatment of Planned Parenthood's application follows:

July 5, 1983

Planned Parenthood submitted its formal application for participation in the fall 1983 campaign. The normal practice of OPM staff is to review applications as they are received and to notify the applicant of any formal or technical defect in the application; no such defects were communicated to Planned Parenthood.

July 6, 1983

Dr. Devine agreed, under order, not to exclude PPFA on the basis of the eligibility restrictions of Executive Order 12404. (*Planned Parenthood Federation of America, Inc.* v. *Devine*, No. 83-2118, D.D.C., July 26, 1983) (See appendix 5.)

August 29, 1983

Planned Parenthood received the first in a series of purportedly "technical" questions regarding its application. OPM's questions to Planned Parenthood are discussed in detail in a latter section of this report.

August 31, 1983

The National Eligibility Committee met and heard representatives of anti-abortion groups attack Planned Parenthood's policies and charge that Planned Parenthood did not meet the technical criteria of the regulations. The Eligibility Committee then voted 7–2 to exclude Planned Parenthood.

Thursday, September 1, 1983

Dr. Devine announced that some 130 of the applicants had been approved for participation in the CFC. Planned Parenthood was not among these; Dr. Devine stated that an additional hearing to examine "potentially disturbing evidence that the group has not met the CFC's financial and reporting requirements" had been scheduled for Friday morning.

Friday morning, September 2, 1983

Attorneys for Planned Parenthood asked that the hearing be postponed until the scope of OPM's inquiry was defined. Dr. Devine asked his counsel to meet with Planned Parenthood representatives to agree on the issues to be addressed. (See appendix 6.)

Friday afternoon, September 2, 1983

Joseph Morris, General Counsel of OPM, and his deputy met with Planned Parenthood representatives and identified nine points of controversy. (See appendix 7.) The hearing was then scheduled for Wednesday, September 7.

Wednesday, September 7, 1983

Dr. Devine set the tone for the hearing by stating "We've [also] decided to give more public participation than these rather restricted guidelines have suggested." Representatives of anti-abortion groups were permitted to denounce Planned Parenthood, and raised questions about its application. Dr. Devine adjourned the hearing at that point, insisting that these "new" issues be discussed at yet another hearing to be held on Friday, September 9. (See appendix 8.)

Friday, September 9, 1983

Representatives of Planned Parenthood rebutted allegations raised by the National Right to Life Committee at Wednesday's hearing. At the end of the Friday session, Planned Parenthood requested a decision from the director, but were told that no decision would be reached until the following week. (See appendix 9.)

Wednesday, September 14, 1983

Campaign materials for local campaigns were scheduled to be printed on September 19. Concerned that Director Devine might not reach a decision until after the campaign materials had been printed, thus effectively blocking its participation in the 1983 CFC, Planned Parenthood sought a court order directing Dr. Devine to issue a decision. On September 14, U.S. District Court Judge Joyce Hens Green ordered Dr. Devine to decide by 3:00 p.m. that day, or Planned Parenthood would automatically be admitted. (See appendix 10.)

Late Wednesday afternoon, September 14, 1983

Having had two months to review Planned Parenthood's application, and after three hearings in two weeks, Dr. Devine rejected Planned Parenthood's application, criticizing PPFA and, implicitly, the court for "demanding my decision on an unreasonably short timetable."

Dr. Devine listed several factors to justify his decision to exclude PPFA, including its "lack of candor" about "precisely what it does regarding abortion". The decisive factor, though, was Planned Parenthood's auditor's use of the American Institute of Certified Public Accountants (AICPA) industry audit guide, *Audits of Voluntary Health and Welfare Organization* (the *Audit Guide*) rather than the *Standards of Accounting and Financial Reporting for Voluntary Health and Welfare Organizations* (the *Standards*) prescribed in the CFC regulations. The controversy over the use of the *Audit Guide* versus the *Standards* is discussed in greater detail in section 7 of this report. (See appendix 11.)

Thursday morning, September 15, 1983

Planned Parenthood filed an administrative appeal rebutting each of the points Dr. Devine raised to support his decision. PPFA asserted that its auditor's use of the *Audit Guide* did, contrary to Dr. Devine's conclusion, meet the "substance of the *Standards*". (See appendix 12.)

Midday Thursday, September 15, 1983

Dr. Devine rejected Planned Parenthood's appeal, reiterating his position that Planned Parenthood's failure to follow the *Standards* was a bar to its participation in the CFC. (See appendix 13.)

Early afternoon, September 15, 1983

Planned Parenthood immediately filed for, and received, a temporary restraining order requiring Director Devine to admit Planned Parenthood to the CFC. The court concluded:

> In light of the differential treatment, the extraordinary and inexplicable delays in the consideration of plaintiff's application, the overall tone of the continuous inquiries, the controversial nature of plaintiff's activities, and defendent's [Dr. Devine] admitted bias against those activities, the Court must conclude that defendant's proffered grounds for denial are merely pretextual, and directly counter this Court's 1983 Orders, both July 15 and 26.

(See appendix 14.)

September 16, 1983

Obeying the court's order, Dr. Devine admitted Planned Parenthood to the campaign. PPFA was assigned to the International Service Agencies category in which it had participated in the 1968-1981 campaigns. (See appendix 15.)

6. SUMMARY OF QUESTIONS AND ANSWERS

In an attempt to discover some technical flaw in Planned Parenthood's application, OPM submitted three sets of questions to Planned Parenthood. Most of these questions required PPFA to re-state or elaborate on the information already contained in its application.

Under CFC regulation 5 C.F.R. 950.407, applicants for participation in the CFC are required to submit lengthy and detailed applications to document the voluntary nature of the organization and its compliance with sound accounting practices. The applications must contain the following information:

(1) the corporate name;

(2) a statement of origin, purpose, and structure of the organization;

(3) a list of chapters or affiliates;

(4) a demonstration of the good will and acceptability of the organization throughout the United States;

(5) an outline of the organization's program;

(6) the membership of the organization's board of directors and a description of its administrative activity;

(7) certification by an independent certified public accountant of compliance with an acceptable financial system and adoption of the Uniform Standards;

(8) a statement of compliance with all factors in the section of the regulations governing fund-raising practices;

(9) a copy of its latest annual report;

(10) a copy of its latest financial report prepared in accordance with the Standards of Accounting and Financial Reporting for Voluntary Health and Welfare Organizations and certification that the report was prepared in conformity with the Standards;

(11) a copy of the latest external audit by an independent certified public accountant; and

(12) a special report to the Director of the Office of Personnel Management consistent with the reporting requirements of the Standards.

Planned Parenthood supplied OPM with the required information in its July 5 application. As noted in the chronology, the OPM staff did not inform PPFA of any formal or technical defects in its application. Nevertheless, Dr. Devine produced a series of questions, the first set of which were received by PPFA on August 29. A summary of these questions and PPFA's response follows.

OPM asked PPFA about the tax-deductibility of contributions it received; the amount of funds PPFA expended on lobbying Federal and state governments; the financial reports of Family Planning International Assistance (FPIA) and the International Planned Parenthood Federation (IPPF); and documentation that no funds received through the CFC were used to fund abortions. (See appendix 16.)

Planned Parenthood responded that with the exception of gifts from foundations and other non-taxable entities, it did not receive any contributions that are not deductible under section 170 of the Internal Revenue Code. PPFA cited its annual information return to the IRS (form 990) in which PPFA reported its expenditures for lobbying. The most recent annual reports, including financial statements, for FPIA and IPPF were submitted to OPM. Finally, PPFA explicitly stated that "no part of PPFA's general fund, whether derived from the CFC or otherwise, is used to provide abortions." (See appendix 17.)

A 45-page indictment of Planned Parenthood submitted by the National Right to Life organization on September 1 provided the basis for the next set of questions. (See appendix 18.) OPM's General Counsel developed nine questions from this material.

OPM's questions dealt with (1) identification of the entity applying; (2) PFA's affiliates' financial data; (3) whether PPFA met the 50% non-federal support test (i.e. that more than half of the organization's support must come from non-federal sources); (4) whether PPFA met the 20% public support text (i.e. that at least one-fifth of the organization's support must come from non-governmental sources); (5) the propriety of counting in-kind contributions as public support; (6) whether Medicaid receipts should be counted as non-Federal support; (7) whether PPFA complied with the bar on "deceptive publicity"; (8) whether interest on loan funds was treated as public support; and (9) whether PPFA's statement on public support complied with generally accepted accounting principles. Planned Parenthood was the only applicant organization subjected to this extensive inquiry.

In its response, Planned Parenthood restated the information contained in its application that Planned Parenthood Federation of America, Inc., under its trademark Planned Parenthood-World Population, was the entity applying. PPFA also stated that it is organized on a federated basis, with a national headquarters organization, PPFA and some 190 separately incorporated local affiliates. Financial data for affiliates of PPFA was submitted as required by section 950.407(f)(12) of the regulations; each PPFA affiliate required to have an independent annual audit. PPFA stated "[T]he accounting practices adopted by Planned Parenthood in respect of its affiliates are identical to those adopted by many major charities, such as the Leukemia Society, American Lung Association, American Diabetes Association, and the United Way," all of which were admitted to the 1983 CFC.

CFC regulations require that an eligible organization receive at least 50% of its funds from sources other than the federal government or at least 20% of its funds from direct or indirect public contributions. PPFA asserted that, when affiliates are included, 31.8% of its revenues for 1982 came from the federal government, far below the 50% limit. Counting the affiliates, public support provides 21.95% of PPFA's revenues, so the 20% test is also met. In-kind contributions of medical supplies, office equipment, and free or reduced rent for program activities (but not volunteer time) were counted as public support in accordance with the *Standards*. PPFA counted Medicaid receipts as non-federal support, since "grants from state or local government agencies (including Medicaid)" are specified in sec. 950.409 of the regulations.

PPFA rebutted OPM's allegation of "deceptive publicity" in fund-raising literature by citing Planned Parenthood's listing as meeting the standards of the Philanthropic Advisory Service of the Council of Better Business Bureaus and the National Information Bureau, the two leading recognized independent agencies that certify the accuracy and fairness of promotional materials used by charitable organizations. PPFA reported that income on loan funds was treated as investment income and, therefore, was not included as public support but rather was included in the "other income" category. Finally, PPFA referred to its auditor's report, financial statements, and detailed testimony to demonstrate its compliance with generally accepted accounting principles, and, thus, with the technical requirements of the CFC regulations. (See appendix 19.)

The final set of "technical" questions addressed to Planned Parenthood were raised at the September 7 hearing. OPM queried PPFA about its IRS report on lobbying expenditures, financial support of PPFA affiliates, the abortion counseling and services provided by PPFA affiliates, its listing under the trademark Planned Parenthood-World Population, and again about the tax-deductibility of contributions made to PPFA.

Planned Parenthood responded that the largest amount of its lobbying expenditures were allocated to "Service to the Field of Family Planning," and cited its financial statements as to the financial support provided to affiliates. In response to OPM's allegation that Planned Parenthood "attempt[s] to conceal that the affiliates in some instances provide abortion services or abortion counseling," PPFA countered:

> It is ludicrous to contend that Planned Parenthood has concealed that abortion services are provided at some affiliate clinics and that counselling includes counselling on the availability of abortions, or that Planned Parenthood, both PPFA and the affiliates, supports the proposition that a woman should have a right to a safe abortion if that is her choice.

The use of the trademark Planned Parenthood-World Population for the CFC was defended by PPFA, citing its familiarity and recognition. PPFA noted that other CFC participants, such as CARE and Project Hope, are also listed by their trademarks and not by the corporate names of the organizations, the Cooperative for American Relief Everywhere, and People to People Health Foundation, respectively.

Finally, Planned Parenthood pointed out that under the CFC regulations, the issue is not whether donations are tax-deductible to the donor but whether the funds were received from the public. (See appendix 20.)

7. Audit Guide/Standards

In his decision to exclude Planned Parenthood from the 1983 CFC, Dr. Devine was unable to rely on any of the above technical objections to PPFA's application, and, therefore, based his decision on PPFA's use of the *Audit Guide* for financial reporting rather than the *Standards* specified in the regulations.

All charitable organizations are required to comply with sound accounting principles and to undergo an annual audit by independent certified public accountants. Confusion has arisen in both the CFC regulations and the charitable community because of the existence of two guides for accounting and financial reporting.

The American Institute of Certified Public Accountants publishes an industry audit guide, *Audits of Voluntary Health and Welfare Organizations*, that defines the procedures an independent public accountant should follow in examining and reporting on an organization's financial statements. The *Standardfs of Accounting and Financial Reporting for Voluntary Health and Welfare Organizations* were developed by three major charitable organizations, and contain detailed standards for organizations to follow in preparing financial information for general public reporting "*based on the revised audit guide's accounting principles*" (emphasis added). Dr. Devine's reliance on distinctions between the two guides is perhaps misdirected, since the two guides are not intended to be mutually exclusive. Indeed, the preamble to the revised edition of the *Standards* states:

> This revised edition of the [*Standards*] seeks to attain uniform accounting and financial reporting by all voluntary health and welfare organizations in compliance with the accounting principles promulgated in the 1974 revised industry audit guide, *Audits of Voluntary Health and Welfare Organizations*, of the American Institute of Certified Public Accountants. . . In a sense, the revised *Standards* and the revised audit guide are complementary publications. Each seeks to achieve uniform and responsible accounting and financial reporting.

Since the *Standards* encourage organizations to base their financial reporting on the audit guide's accounting principles, and since PPFA's financial statements were certified by a partner at the accounting firm of Peat, Marwick, Mitchell and Company as conforming to generally accepted accounting principles, Dr. Devine's exclusion of Planned Parenthood because of its use of the *Audit Guide* contravenes the purpose for which the two guides were developed.

Further complicating the matter are the CFC regulation's several provisions relating to the subject of financial reporting. Sections 950.405(a) and 950.407(f) of the regulations contain references to "an annual financial report prepared in accordance with the *Standards*," "certification by an independent certified public accountant," and "a special report to the Director consistent with the reporting requirements of the *Standards*."

Several charitable organizations, other than PPFA, which did not follow the detailed *Standards* were nonetheless admitted to participate in the CFC. On September 15, Dr. Devine directed the OPM staff to conduct an investigation into agencies identified by Planned Parenthood as not complying with the financial reporting requirements of sections 950.405(a) and 950.407(f) of the CFC regulations.

8. Conclusion

Since his appointment as Director of the Office of Personnel Management in the spring of 1981, Dr. Donald J. Devine has repeatedly attempted to exclude Planned Parenthood from participation in the Federal government's charitable solicitation drive, the Combined Federal Campaign (CFC). This effort is entirely consistent with Dr. Devine's frequently stated opposition to abortion and with his voluntary efforts before joining the Reagan Administration on behalf of various Right to Life organizations.

The role of the Federal government in the CFC is one of opening its doors to a worthwhile private enterprise. The Campaign is designed to benefit Federal employees by providing them the ease of payroll deduction to make contributions to charitable organizations. It also serves the interests of charitable organizations by making it possible for them to solicit the largest workforce in the country. The role of the government itself is rather passive: the government sets general policy to avoid disruption of the workplace and serves as a filter to ensure that disreputable organizations are not permitted to exploit

Federal workers. Beyond these functions, the government takes no role. It neither endorses nor supports the activities of each participating charity, nor should it.

These circumstances pose a challenge for an individual appointed to high government office. It is naive to suggest that individuals appointed as agency heads should forget their beliefs. It is intolerable, however, for such individuals to impose their beliefs without the support of Congress. What, then, is the appropriate course for a government official? The answer is ordinarily found in the special role of the Congress in American government. Within the confines of the Constitution, the Congress is free to set policy. Hence, it would in most circumstances be more appropriate for Dr. Devine to seek congressional action to win backing for his political ideology.

But here, Congress lacks the power to exclude Planned Parenthood from the CFC. The United States Supreme Court has made it clear that the ability of an organization to solicit financial support is a right protected by the First Amendment. Any restrictions on that right must be narrowly drawn to achieve a valid State purpose and must be oblivious to the goals of the organization. An effort to exclude Planned Parenthood is clearly an effort to abridge that organization's First Amendment rights on the basis of the purpose of the organization.

Further, the right of a woman to terminate a pregnancy through abortion is a right protected by the Constitution. This right is so fundamental that State laws to limit the right to abortion have been consistently invalidated by the Supreme Court. Dr. Devine's efforts to ban Planned Parenthood on the basis of its support of that right are surely improper under the Constitution.

Hence, as long as the Federal government opens its doors to charitable solicitations, it must let in groups which provide funding for abortions, provided that such groups run organizations of integrity. Again and again, Planned Parenthood has been shown to be such an organization. Indeed, Planned Parenthood is one of the best established and most respected charitable organizations in the Nation.

Given the inappropriateness of an agency head attempting to impose his own personal views contrary to his agency's regulations, the constitutional inability of the Congress to impose content-based restrictions on protected First Amendment activities, and the high degree of protection which the Constitution provides to abortion, the efforts of Dr. Devine can only be seen as an effort at harassment. Judge Green found as much when she ordered the reinstatement of Planned Parenthood to this year's campaign. While such harassment creates political support for Dr. Devine among Right to Life organizations, it is offensive conduct for individuals who have been given the public trust.

APPENDIX 1

NINETY-SIXTH CONGRESS

PATRICIA SCHROEDER, COLO., CHAIRWOMAN

MORRIS K. UDALL, ARIZ.
HERBERT E. HARRIS II, VA.
WILLIAM (BILL) CLAY, MO.

JIM LEACH, IOWA
GENE TAYLOR, MO.
CHARLES PASHAYAN, JR., CALIF.
JAMES A. COURTER, N.J.

U.S. House of Representatives
COMMITTEE ON POST OFFICE AND CIVIL SERVICE
SUBCOMMITTEE ON CIVIL SERVICE
[illegible] HOUSE OFFICE BUILDING ANNEX I
Washington, D.C. 20515

December 20, 1979

Dr. Alan K. Campbell, Director
Office of Personnel Management
1900 E Street, N.W.
Washington, D.C. 20415

Dear Director Campbell:

The Subcommittee on Civil Service of the Committee on Post Office and Civil Service of the House of Representatives held four days of hearings on the Combined Federal Campaign (CFC) during October, 1979. While the hearings convinced the Subcommittee that CFC is a highly efficient fund-raising operation which provides needed support to many legitimate charities on the local, national and international levels, the hearings also alerted the Subcommittee to serious problems existant in CFC. The major problems include the exclusion of many deserving charities, including some serving minority communities, from the campaign; the use of an arcane and potentially misleading formula to distribute undesignated contributions; and the fact that coercion is neither isolated nor aberrant in CFC. The Subcommittee found that many charities and Federal workers are losing confidence in the Combined Federal Campaign.

The Subcommittee strongly endorses efforts by the Federal government, as an employer, to facilitate voluntary, charitable giving by civil servants. We are concerned that the deficiencies we found in CFC could weaken and jeopardize the program in the years ahead. For this reason, we request that you amend the Manual on Fund-Raising Within the Federal Service to acheive the general principles set forth below. Please report to the Subcommittee, by March 15, 1980, on what actions you have taken in response to this request.

Principle #1. There is no intrinsic reason that the central personnel management agency of government should co-ordinate the employee fund-raising effort. Because the Office of Personnel Management (OPM) has many more pressing duties, we recommend that OPM operate CFC in a manner designed to reduce its commitment of resources. OPM's responsibilities should be transferred, as far as practicable, to one national CFC committee and numerous local committees, made up exclusively of Federal employees. These committees should be broadly reflective of the workforce. Rank and file employees should be selected to these committees through procedures which provide for participation by all interested employees. These committees should make all the basic decisions about CFC operations, including some, which have a significant impact on civil servants, which are now made by the participating charities, such as determining the content of the brochure.

Principle #2. The Subcommittee believes that the more Federal employees know about the participating charities, the more likely they are to contribute. Participating agencies should, therefore, be permitted and encouraged to provide information to potential donors about themselves. Further, the brochure should be expanded to provide more information about each charity and grouping, including information about their program and finances.

Principle #3. The Subcommittee is most seriously concerned about the level of pressure placed on Federal employees during the campaign. We ask OPM to promulgate a clear definition of prohibited fund-raising conduct, based on the consent decree filed in Riddles v. Army on March 19, 1979. This definition would constitute a regulation implementing merit system principles and would include a prohibition on supervisors soliciting from their employees; full disclosure of the options for confidential giving or non-participation in CFC; provision for confidential giving directly to the payroll office; safeguards to assure that supervisors never see contributor lists; a ban on setting participation or dollar goals below the installation level; a ban on 100% participation goals; and publication of the names of officials to whom complaints of coercion should be directed. Although top management officials should be able to endorse the campaign, they should be prohibited from doing so in a coercive way. The Subcommittee has written the Special Counsel of the Merit Systems Protection Board and the Director, Office of Management and Budget, asking for assistance in stopping coercion. (Copies attached.) OPM should conduct research into other methods of coercion prevention, including mandatory confidential giving, to assess their impact on employee morale, perceptions of coercion, and participation. Finally, the practice of extending the length of campaigns or of holding supplementary campaigns is inherently coercive. The length of each campaign should, therefore, be strictly limited and only one campaign should be permitted in a year.

Principle #4. The Subcommittee found that numerous legitimate charities have been excluded from participation either by narrow regulations or by restrictive interpretations of them. OPM should modify the regulations on national entry to permit participation by groups which: address the needs of any deprived segment of society; focus on the problems of minority communities and, thus, do not have chapters in all parts of the country; have higher than usual overhead costs which could be reduced to a reasonable level after a few years in CFC. Moreover, the primary route of entry should be shifted to the local level. Local CFC committees should be empowered to admit local groups which demonstrate a moderate level of Federal employee support, probably through a petition procedure, and which meet certain minimum standards set by OPM. These minimum standards should require financial integrity, mandate broad disclosure, and ban illegal discrimination. To husband the time of local committee members, the minimum standards should be able to be applied without extensive investigation.

Principle #5. The problem of distributing undesignated contributions is one of balancing competing interests in meeting community, national, and international needs, disclosing adequate information to donors, and responding to the will of contributors. The current formula has two deficiencies: First, it may mislead donors into thinking that, for each dollar they designate to a specific charity, that charity's total receipts will increase by a like amount. Second, it poses a dilemma for those who find one charity morally reprehensible, since even if they designate to another group, they will be forcing more undesignated funds to the offensive charity. One solution is to treat undesignated funds separately from designated funds, so that the amount of designations will in no way alter the percentage of undesignated money each group receives. Employees should know, at the time they contribute, the exact percentage of undesignated dollars that will go to each group, so they can make an informed judgment as to whether to designate. Whatever new formula is devised should permit all eligible groups, including those newly admitted, to share in the undesignated funds. The formula should also provide participating charities with sufficient information to plan their activities.

Principle #6. Questions have been raised about the adequacy of fiscal controls on the route that contributed money travels from the donor's pocket to the recipient charity. The Subcommittee has asked the General Accounting Office to determine if greater safeguards are needed.[4] Pending that, the Subcommittee believes that only independent, disinterested parties should serve as fiduciaries for local CFCs.

The Subcommittee supports strengthening the Combined Federal Campaign. Strengthening the campaign does not necessarily mean collecting more money. Rather, a strong campaign is one in which civil servants contribute because they want to help the less fortunate. A strong campaign is one that can raise funds without coercion, one that is open to all legitimate charities, and one that distributes its receipts in an open and comprehensible manner. A strong campaign is one that serves the interests of Federal employees, their communities, their nation, and their world.

Sincerely,

Pat Schroeder
PATRICIA SCHROEDER
Chairwoman

JIM LEACH
Member of Congress

MORRIS K. UDALL
Member of Congress

Bill Clay
WILLIAM CLAY
Member of Congress

Jim Courter
JAMES A. COURTER
Member of Congress

APPENDIX 2

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED
JUL 15 1983
JAMES F. DAVEY, Clerk

NAACP LEGAL DEFENSE AND)
EDUCATIONAL FUND, INC., et al.,)
)
Plaintiffs,)
)
v.) Civil Action No. 83-0928
)
DONALD J. DEVINE, DIRECTOR,)
UNITED STATES OFFICE OF PERSONNEL)
MANAGEMENT,)
)
Defendant.)

MEMORANDUM OPINION

In this action, plaintiffs challenge their threatened exclusion from participation in the Combined Federal Campaign (CFC), an annual charitable fund-raising drive conducted by the federal government among its employees. The CFC is the only means by which charitable organizations may solicit contributions from federal employees or military personnel at their workplaces or duty stations. Plaintiffs are non-profit, tax-exempt charitable organizations within the meaning of section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. § 501(c)(3). Each plaintiff engages in litigation and other activities with the purpose of protecting the environment advancing the civil rights of a particular group of minorities or women. They have been referred to generally as "legal defense funds." Defendant is the Director of the Office of Personnel Management (OPM), the agency under whose auspices the CFC is conducted. Plaintiffs essentially argue that a new Executive Order having the objective of denying legal defense funds the opportunity to participate in the CFC violates their asserted first amendment right to engage in charitable solicitation. As plaintiffs put it, the "basic issue" of this case is whether they, like other CFC participants, will be allowed to have their "30-word" informational statement included in the annual campaign brochure. This Court previously denied plaintiffs' motion for a preliminary injunction and defendant's motion to dismiss. This matter is now ripe for decision upon plaintiffs' motion for summary judgment which, along with their renewed request for a preliminary injunction, was argued on July 6, 1983. For the reasons which follow, the Court grants plaintiffs' motion for summary judgment in part and dismisses the action in part, the renewed request for preliminary injunctive relief being denied as moot.

The CFC was created by President Kennedy through Executive Order 10927, on March 18, 1961. Exec. Order No. 10,927, 3 C.F.R. 454 (1959-63 Compilation). How it operates is described in greater detail in *NAACP Legal Defense and Educational Fund, Inc. v. Campbell*, 504 F. Supp. 1365 (D.D.C. 1981) [hereinafter referred to as *NAACP LDF I*] and *NAACP Legal Defense and Educational Fund, Inc. v. Devine*, 560 F. Supp. 667 (D.D.C. 1983) [hereinafter referred to as *NAACP LDF II*]. At one time legal defense funds such as plaintiffs were excluded from participation in the CFC because of the "direct services" requirement. The direct services requirement limited participation in the CFC to charitable organizations "providing direct services to persons in the fields of health and welfare services." *NAACP LDF I*, 504 F.

Supp. at 1366 (quoting Manual on Fund-Raising Within the Federal Service for Voluntary Health and Welfare Agencies § 5.21).

Two of the plaintiffs in the instant action challenged that direct services requirement on, among other grounds, the ground that it abridged their first amendment right to engage in charitable solicitation. NAACP LDF I, 504 F. Supp. at 1366. Agreeing with the plaintiffs that the direct services requirement impinged upon the plaintiffs' first amendment rights, Judge Gesell struck down the requirement as "too vague to comport with the strict standards of specificity" required in the first amendment context. Id. at 1366-67. Thereafter, all of the plaintiffs in the instant action applied and were permitted to participate in the CFC for 1981 and/or 1982 as "national service agencies." Executive Order 10927 was superceded by Executive Order 12353 on March 23, 1982, 47 Fed. Reg. 12785 (1982); the new order did not affect plaintiffs' ability to participate in the CFC.

On February 10, 1983, however, Executive Order 12353 was amended by Executive Order 12404, which had the objective of reinstating the direct services requirement, but with the constitutionally-required specificity that the previous such requirement was found to lack in NAACP LDF I. It states that

> eligibility for participation in the Combined Federal Campaign shall be limited to voluntary, charitable, health and welfare agencies that provide or support direct health and welfare services to individuals or their families. Such direct health and welfare services must be available to Federal employees in the local campaign solicitation area, unless they are rendered to needy persons overseas. Such

> services must directly benefit human beings, whether children, youth, adults, the aged, the ill and infirm, or the mentally or physically handicapped. Such services must consist of care, research or education in the fields of human health or social adjustment and rehabilitation; relief of victims of natural disasters and other emergencies; or assistance to those who are impoverished and therefore in need of food, shelter, clothing, education, and basic human welfare services.

Exec. Order No. 12,404 § 1, 48 Fed. Reg. 6685 (1983). The Executive Order also provides that "Agencies that seek to influence the . . . determination of public policy through . . . advocacy, lobbying or litigation on behalf of parties other than themselves shall not be deemed charitable health and welfare agencies and shall not be eligible to participate in the Combined Federal Campaign." The announced purpose of the Executive Order's instruction that a direct services requirement be reimposed was to exclude legal defense funds from the CFC, identifying as such several of the plaintiffs in this action. Devine Memorandum of Feb. 2, 1983, "New Executive Order for the Combined Federal Campaign," Exh. K to Ralston Affidavit.

According to defendant, the participation of some organizations in the past had resulted in controversy and threatened boycotts of the campaign. For example, various labor groups expressed their opposition to the including of the National Right to Work Legal Defense Foundation in the CFC and warned defendant of potential boycotts as a result. Chairpersons of some local CFC committees also advised defendant of their concerns that contributions to the CFC might decline because of the presence in the campaign of organizations involved in such issues as integration and abortion, as well as "right-to-work."

Plaintiffs argue that the reinstated direct services requirement suffers from the same vagueness defect as the rule at issue in *NAACP LDF I*. They also argue that because the CFC is a "limited public forum," the Executive Order's exclusion of organizations "that seek to influence . . . the determination of public policy through . . . advocacy, lobbying, or litigation on behalf of parties other than themselves" is an unconstitutional infringement upon their first amendment rights. Furthermore, they assert that the order violates their guarantee to equal protection of the laws. Defendant contends that the vagueness challenge is premature inasmuch as any such deficiency could be cured, in defendant's view, by the promulgation of implementing regulations containing the needed specificity. This argument has merit: proposed regulations to implement Executive Order 12404 were announced on June 24, 1983 for a 30-day notice and comment period. Yet the substantive first amendment issues raised by the Executive Order are ready for judicial review at this time, for the reason that no regulation could remove the allegedly unconstitutional exclusion and remain consistent with the Executive Order.

It is important to note that the CFC provides employees with two ways in which to make contributions, inasmuch as (for reasons which will be explained below) plaintiffs' first amendment rights differ with respect to these two methods. An employee may designate that his donations be distributed to particular organizations participating in the CFC. Alternatively, if the employee does not designate any agency to benefit from the donation, the amount contributed is placed into a pool which is divided among the approved agencies in accordance with a formula set forth in the regulations. See NAACP LDF II, 560 F. Supp. at 670.

I. Plaintiffs' First Amendment Rights

The solicitation of charitable contributions involves interests protected by the first amendment's guarantee of freedom of speech. Village of Schaumburg v. Citizens for a Better Environment, 444 U.S. 620, 629. At least with respect to designated funds, this principle applies to the CFC: by engaging in solicitation throughout the campaign, an organization seeks to persuade an employee to make a donation to that organization. See NAACP LDF I, 504 F. Supp. at 1637, see also NAACP LDF II, 560 F. Supp. at 675. Yet the same interests are not present in the making of undesignated contributions. An employee's decision to make a general undesignated donation is not motivated by the same considerations as a decision to designate a contribution. Such a decision is not a response to a particular organization's solicitation activities in the same way that a decision to make a designated contribution is, for the reason that he yields to the CFC all control over how that money is to be disbursed.

This was the basis for this Court's decision in NAACP LDF II that denying plaintiffs the eligibility to receive undesignated funds did not violate their first amendment right to engage in charitable solicitation. This Court found *NAACP LDF II* "quite a different case" from *NAACP LDF I*, noting that while the opportunity for the plaintiffs to receive designated contributions was ensured by the prior decision, "[b]y contrast, a donor making undesignated contributions elects to express no preference that his money should be distributed in part to plaintiffs; rather all he is saying is that his money should go to the public good." 560 F. Supp. at 675. Accordingly, with regard to undesignated funds, plaintiffs' claim appears to be more properly the subject of an equal protection analysis than first amendment scrutiny.

Where the government has created a forum for activities involving free speech, reasonable time, place, and manner restrictions are permissible, but any content-based prohibition must be "narrowly drawn to effectuate a compelling state interest." *Perry Education Association v. Perry Local Educators' Association*, 103 S. Ct. 948, 955 (1983), *see also Police Department of Chicago v. Mosely*, 408 U.S. 92, 96 (1977). Attempting to analogize the CFC to the school internal mail system found not to be a public forum by the Supreme Court in *Perry Education*, defendant argues that the CFC is not a public forum and that therefore plaintiffs have no right to participate in it, because access to the campaign is limited to certain types of groups.

It is clear that the CFC does constitute a public forum to the extent that it permits numerous charitable organizations to present their messages to federal employees. As Judge Gesell found, "by providing organizations the opportunity to participate in the CFC, the government has, in effect, provided a billboard or channel of communication through which organizations can disseminate their appeals to federal workers." *NAACP LDF I*, 504 F. Supp. at 1367. As defendant recently explained to the Subcommittee on Manpower and Housing of the House Committee on Governmental Operations, charitable appeals at federal facilities existed prior to the creation of the CFC through Executive Order 10927, but on an unregulated basis that caused disruption in the workplace and did not provide charitable organizations with an efficient, consistent means of soliciting contributions. Devine Statement to Subcomittee on Manpower and Housing at 2-3 (Mar. 24, 1983), Attachment C to Motion to Dismiss. Since charitable solicitation in the federal workplace predated the CFC, Executive Order 10927 did not open the door to such activities, but placed guidelines upon how those activities would be conducted. The CFC therefore became the exclusive forum for charitable solicitation in the federal workplace. Accordingly, the CFC is a limited public forum to which the above-noted limitations upon governmental regulations apply.

Moreover, plaintiffs do fall within the limits of that forum as it historically has existed. Executive Order 10927 made no differentiation among charitable organizations on the basis of how they accomplish their objectives. Exec. Order No. 10,927, 3 C.F.R. 454 (1959-63 Compilation). Certainly the CFC's provision precluding charitable organizations from any other access to government employees at their workplaces would prevent plaintiffs from undertaking such solicitation outside of the campaign. The limited public forum created by the CFC embraces plaintiffs and therefore any restriction upon their participation is subject to the constitutional requirements set forth above.

Plaintiffs argue, persuasively, that the restriction at issue here is a content-based prohibition that must survive close scrutiny in order to be upheld. There is no doubt that the exclusion's focus is the type of activity engaged in by certain organizations. Those organizations that exercise their right, see NAACP v. Button, 371 U.S. 415, 428-29 (1963), to seek to change policy and obtain legal redress for wrongs through litigation and other means are to be barred from participation in the CFC under the new Executive Order. As the "expression" protected under the first amendment in an act of charitable solicitation is a request for contributions, the "content" of that expression is the accompanying statement of how those contributions will be used. It is this "content" that has, according to defendant, engendered such controversy among potential contributors as to warrant the exclusion based thereupon. See, e.g., OPM Press Release, "President Orders Federal Drive to Focus on Charity for Truly Needy" (Feb. 10, 1983) at 2, Exh. A to McClure Affidavit [hereinafter cited as "OPM Press Release"] (quoting defendant, who noted a "'[s]entiment favoring a wholesale boycott of the CFC'").

Nor does defendant's characterization of this exclusion as a "viewpoint-neutral" restriction change the fact that it is a content-based prohibition requiring close scrutiny. The Supreme Court rejected a similar argument in Consolidated Edison Co. v. Public Service Commission, 447 U.S. 530 (1980). The Court squarely ruled that "[t]he First Amendment's hostility to content-based regulation extends not only to restrictions on particular viewpoints, but also to prohibition of public discussion of an entire topic." 447 U.S. at 537. Consequently, it is of no moment that "'the advocacy groups, both left and right . . . will be excluded from the campaign.'" OPM Press Release at 2, Exh. A to McClure Affidavit (quoting defendant).

The next issue to consider is whether the new requirements for eligibility to participate in the CFC are "narrowly drawn to effectuate a compelling state interest." The enumerated purposes of Executive Order 12404 are: (1) "to lessen the burdens of government and of local communites in meeting needs of human health and welfare," (2) "to provide a convenient channel through which Federal public servants may contribute to these efforts," (3) "to minimize or eliminate disruption of the Federal workplace and costs to Federal taxpayers that such fund-raising may entail," and (4) "to avoid the reality and appearance of the use of Federal resources in aid of fund-raising for political activity or advocacy of public policy, lobbying, or philanthropy of any kind that does not directly serve needs of human health and welfare." Exec. Order No. 12,404 § 1. Of these, only the fourth objective is directly related to the exclusionary provision at issue here.

In his March 24, 1983 statement to the Subcommittee on Manpower and Housing, defendant explained that the motivation for the restriction in question was the controversy allegedly being engendered by the presence of legal defense funds and "advocacy groups" in the CFC. Devine Statement to Subcommittee on Manpower and Housing at 5. According to defendant, "participation in the Campaign by these groups provoked increasing concern and even outright hostility." Id. Defendant stated that a "torrent" of complaints concerning the groups' participation in the CFC were made to OPM by the end of the 1982 campaign. Id. Employees, defendant asserted, "were outraged, and not without justification" that federal resources were being deployed in aid of such organizations. Id. at 6. He declared that "We were told [in the letters of complaint to OPM], in no uncertain terms, that unless the Campaign were reformed, employee boycotts--some concerted, others passive, but all of them devastating--would bring the life of the Campaign to an end." Id.

Not only is the assertedly "controversial" nature of plaintiffs' purposes not a compelling governmental interest, it is an impermissible basis for a restriction upon speech. "It is firmly settled that under our Constitution the public expression of ideas may not be prohibited merely because the ideas are themselves offensive to some of their hearers." Street v. New York, 394 U.S. 576, 592 (1969). There is no doubt that "government may not grant the use of a forum to people whose views it finds acceptable, but deny use to those wishing to express less favored or more controversial views." Police Department of Chicago v. Mosely, 408 U.S. at 96.

Defendant argues that the asserted interest in "avoid[ing] the . . . use of Federal resources in aid of fund-raising for" the various types of activities deemed not to constitute "direct services" is supported by the recent decision of the Supreme Court in Regan v. Taxation With Representation of Washington, No. 81-2338 (U.S. May 23, 1983). In that case, the Court held that section 501(c)(3) of the Internal Revenue Code, which prohibits an organization from using tax-deductible contributions to support substantial lobbying activities, did not infringe any right or regulate any activity under the first amendment. Id., slip op. at 5. To allow tax-deductible contributions to be used for lobbying purposes would be equivalent to a federal subsidy for that activity, the Court held, and "Congress is not required by the First Amendment to subsidize lobbying." Id. The instant case is distinguishable. It does not involve the question of a subsidy for plaintiffs' litigation and other advocacy activities--the issue raised by defendant here merely concerns the benefits which would inure to plaintiffs as well as all CFC participants as a result of the government's assumption of the task of operating the campaign. But the government did not accept the responsibility to conduct the CFC because of a desire to confer a benefit upon the various charitable organizations participating therein; rather, as explained above, it did so in order to regulate the many charitable appeals being made to federal employees at their workplaces. See Exec. Order No. 10,927 § 2(b) (authorizing predecessor of OPM Director to designate specific periods in which solicitations may be conducted and limit number of solicitations to three per year). The cost of operating the CFC is the price for creating this exclusive channel by which charitable appeals may be made.

As the government's desire to avoid the appearance of using federal resources to support the legal defense funds' fund-raising efforts, total exclusion from the CFC certainly is not the least restrictive alternative that could have been imposed. While plaintiffs cannot be excluded from the CFC, the government may, if it desires, insert into campaign materials a neutral statement to the effect that its role in the CFC is simply to disseminate information and facilitate the making of donations. This would be sufficient to convey the government's desire not to endorse the making of contributions to any particular organization.

The only legitimate interest that the government can properly assert that pertains to the alleged opposition of employees to the participation of certain types of groups in the CFC is the protection of the employees' right not to contribute. NAACP LDF II, 560 F. Supp. at 676. But that problem only arises in the case of undesignated contributions. Therefore to the extent that the exclusion at issue could be considered to be directed at this interest, it is not as narrowly drawn as it might be in that it applies to designated contributions as well.

In light of the foregoing, the Court holds that, as far as it applies to the making of designated contributions, the directive in Executive Order seeking to reinstate a direct services requirement is contrary to plaintiffs' first amendment right to engage in charitable solicitation in a limited forum. Therefore, defendant shall be enjoined from denying pending or future application of plaintiffs to participate in the CFC for the solicitation of designated contributions.

II. Equal Protection Considerations

As noted above, plaintiffs' exclusion from participation in the CFC with respect to undesignated contributions appears to be more appropriately subject to an equal protection analysis rather than first amendment review. The fact that first amendment activity is a primary part of each plaintiff's mission arguably situates the plaintiffs differently from those organizations in the CFC who do not engage in such activity, in view of the first amendment rights of employees who make undesignated contributions. NAACP LDF II, 560 F. Supp. at 676-77. Ensuring that the CFC is operated in such a way as to protect those rights is a legitimate governmental interest. However, as final regulations implementing Executive Order 12404 have yet to be promulgated it is premature to consider whether the means by which the government might carry out that interest are proper. Accordingly, as far as plaintiffs' action concerns their access to undesignated funds, this cause will be dismissed without prejudice.

III. Preliminary Relief

Plaintiffs' request for preliminary injunctive relief is, of course, moot as it pertains to their ability to make their appeal for support through the CFC and receive designated contributions as a result. With respect to the question of plaintiffs' eligibility to receive undesignated contributions, a preliminary injunction is not warranted.

The standards governing the issuance of such relief are well-known and set forth in *Virginia Petroleum Jobbers Association v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958). *See also* *Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977). The factors which comprise those standards are (1) likelihood of success on the merits, (2) irreparability of harm, (3) detriment to third parties, and (4) where the public interest lies. During this litigation, the parties generally have focused their attention on the question of the plaintiffs' right to engage in charitable solicitation in the CFC rather than the issue of their eligibility to share in undesignated funds. As explained above, any right plaintiffs might have to access to undesignated contributions is much less than their right to solicit designated contributions through the CFC. On the question of access to undesignated funds, then, plaintiffs have not shown a strong likelihood of success on the merits. As to the second factor, inasmuch as undesignated funds are not distributed from their pool until after the annual campaign is concluded, it cannot be said that plaintiffs would be irreparably harmed should injunctive relief not issue at this time. Such relief could work to the detriment of other organizations eligible to receive undesignated funds for the reason that assuming defendant's characterization of the public outcry arising from plaintiffs' participation in the CFC is accurate, some employees may elect not to make the undesignated contributions they otherwise might make. Finally, it has not been shown why the public interest would require the issuance of this relief. Therefore, it is denied.

An Order consistent with this Memorandum Opinion shall be entered this date.

Joyce Hens Green
JOYCE HENS GREEN
United States District Judge

July 15, 1983

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED
JUL 15 1983
JAMES E. DAVEY, Clerk

NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC., et al.,

Plaintiffs,

v.

Civil Action No. 83-0928

DONALD J. DEVINE, DIRECTOR, UNITED STATES OFFICE OF PERSONNEL MANAGEMENT,

Defendant.

ORDER

Consistent with the Memorandum Opinion entered in this action this date, it is, by the Court, this 15th day of July, 1983,

ORDERED, that plaintiffs' motion for summary judgment shall be and hereby is granted in part and denied in part, as explained in the Memorandum Opinion, and it is

FURTHER ORDERED, that defendant, his agents and subordinates, shall be and hereby are permanently enjoined from excluding plaintiffs from participation in the Combined Federal Campaign with respect to the solicitation of "designated contributions," as that term is used in this Memorandum Opinion, on the basis of the provisions of section (2)(b)(1 through 3) of Executive Order No. 12353, as amended by section 1(b) of Executive Order No. 12404 of February 10, 1983, and it is

FURTHER ORDERED, that to the extent that plaintiffs' complaint concerns their right to receive "undesignated contributions," as that term is used in the Memorandum Opinion, that claim is dismissed without prejudice, and it is

FURTHER ORDERED, that plaintiffs' request for preliminary injunctive relief shall be and hereby is denied.

This cause stands closed.

JOYCE HENS GREEN
United States District Judge

APPENDIX 3

United States
Office of
Personnel Management
Washington, D.C. 20415

JUN - 9 1981

In Reply Refer To:

Your Reference

CFC MEMORANDUM NO. 81-1

MEMORANDUM FOR THE HEADS OF DEPARTMENTS AND AGENCIES

SUBJECT: 1981-82 Fund-Raising Bulletin

Listed in this bulletin are the national voluntary agencies, recognized by the Director of the U. S. Office of Personnel Management in accordance with Executive Order 10927, for on-the-job solicitation privileges in the Federal service during the coming campaign year. Organizations which have been approved for the first time are indicated by an asterisk in the listing.

The worthwhile efforts of these voluntary organizations deserve the generous support of Federal employees. While individually we cannot help all those in need, working together through voluntary charitable organizations we can channel our concern into meaningful results. This year especially, our efforts to reduce the debilitating impact of inflation on all Americans, places increasing emphasis on the work of voluntary charitable organizations to meet the needs of the less fortunate in our society.

Through our participation in the Combined Federal Campaign we can ensure that help is brought quickly and effectively, whenever it is needed.

RECOGNIZED CAMPAIGNS AND AGENCIES

1. Local United Funds, Community Chests and Other Federated Groups which are members in good standing of, or are recognized by, the United Way of America.

2. The American National Red Cross (Domestic and overseas areas)

3. National Health Agencies (domestic and overseas areas)
   American Cancer Society
   American Diabetes Association
   American Heart Association
   American Kidney Fund
   American Lung Association
   Arthritis Foundation
   Association for Retarded Citizens of the U.S. (formerly the National Association for Retarded Citizens)
   *City of Hope
   Cystic Fibrosis Foundation
   Epilepsy Foundation of America
   *Juvenile Diabetes Foundation
   *Leukemia Society of America
   March of Dimes Birth Defects Foundation
   Muscular Dystrophy Association
   Myasthenia Gravis Foundation
   National Association for Sickle Cell Disease
   National Easter Seal Society
   National Hemophilia Foundation
   *National Jewish Hospital and Research Center/National Asthma Center

National Kidney Foundation
National Mental Health Association
National Multiple Sclerosis Society
National Retinitis Pigmentosa Foundation
National Society for Autistic Children
National Society to Prevent Blindness
*Research to Prevent Blindness
United Cerebral Palsy Association

4. International Services Agencies (domestic and overseas areas)
Africare
CARE
Foster Parents Plan
Helen Keller International
*International Eye Foundation
International Human Assistance Programs
International Rescue Committee
*Oxfam-America
Pearl S. Buck Foundation
Planned Parenthood-World Population
Project HOPE (People-to-People Health Foundation)
Save the Children Federation
*Unitarian Universalist Service Committee
*United States Committee for UNICEF
International Social Service

5. International Service Agencies (overseas area)
American Social Health Association
*Armed Services Department, YMCA
Boy Scouts of America, Overseas Councils
Girl Scouts of America, Overseas Affiliates
United Seamen's Service
National Park and Recreation Association

6. United Service Organizations (USO) (Overseas area)

7. National Service Agencies (domestic area)
*American Federation for the Blind
American Social Health Association
*Federally Employed Women Legal Defense and Education Fund
*Indian Law Resource Center
Medic Alert Foundation International
*NAACP Legal Defense and Educational Fund
NAACP Special Contribution Fund
*National Black United Fund (Los Angeles, CA; Detroit, MI; New York, NY; Atlanta, GA; Canton, OH)
*National Organization for Women Legal Defense and Education Fund
*National Park and Recreation Association
*Native American Rights Fund
*Puerto Rican Legal Defense and Education Fund
*United Seamen's Service
United Service Organizations (USO)

Donald J. Devine
Director

cc: Fund-Raising Program Coordinators
Chairpersons, Local Federal Coordinating Groups
Directors, National Voluntary Agency Groups

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United States
**Office of
Personnel Management** Washington, D.C. 20415

JUN - 9 1981 In Reply Refer To Your Reference

CFC MEMORANDUM NO. 81-2

MEMORANDUM FOR DEPARTMENT AND AGENCY FUND-RAISING PROGRAM COORDINATORS
AND CHAIRMEN, FIELD COORDINATING GROUPS

SUBJECT: 1981-1982 Fund-Raising Bulletin for the Combined Federal Campaign

I. The Combined Federal Campaign

The Combined Federal Campaign has been the subject of a great deal of recent attention and controversy. In spite of these difficulties, the traditional generosity of Federal employees, and the dedicated work of volunteers in agencies at all levels has resulted in an outstanding response to the many worthwhile needs that are represented in these campaigns. I urge that Federal employees continue this much needed support.

In a recent decision by the U.S. District Court for Washington, D.C., National Legal Defense & Education Fund, Inc., v. Alan Campbell, the Court exhorted action by the Office of Personnel Management. The Court said, "It behooves the government officials responsible for the [CFC] program to re-examine the basic premise on which the program was established so that more acceptable standards can be developed which will assure continuation of the government's significant and useful support for worthy charitable solicitation." I am determined that the Office of Personnel Management turn its attention to this important task. In the past, the program has been inadequately administered and too loosely regulated by OPM.

Although past congressional hearings, Court decisions, and discussions by affected public and private officials prepare one to understand that there are problems with the administration and regulation of the program, the more deeply one goes into the matter, the more apparent is the need for clearer direction and more precise standards. In this year's submissions for eligibility to the CFC, the Committee on Private Voluntary Agency Eligibility (called the Eligibility Committee) has found over 30 examples where eligibility criteria have not been clearly met. The Eligibility Committee report to the Director recommends: "that, if the deficiencies noted above are not corrected in applications submitted for the fall 1982 campaign, the Director deny renewal of fund-raising privileges. All applications must be treated in a fair and consistent manner."

The present criteria for eligibility are set forth in the "Manual on Fund-Raising Within the Federal Service for Voluntary Health and Welfare Agencies." The Manual has an ambiguous status as a regulatory guideline. It would have firmer legal grounding if it were based on a Federal Personnel Manual issuance, a Federal Register issuance, Executive Order, or a statute.

The campaign was established pursuant to Executive Order 10927, issued on March 18, 1961. That Order delegated authority to the Chairman of the Civil Service Commission (now Director, Office of Personnel Management) to:

> make arrangements for such national voluntary health and welfare agencies and such other national voluntary agencies as may be appropriate to solicit funds from Federal employees and members of the Armed Forces at their place of employment or duty station.

Because of the discretion given to the Director of the Office of Personnel Management by the Executive Order, additional regulatory authority was recognized. This resulted in the publication of the Manual. The appropriateness of regulation was accepted in NAACP Legal Defense and Education Fund, Inc., et al, v. Alan Campbell, although the Court did not rule on whether it would have been more appropriate through FPM or Federal Register issuance.

II. Government Interest in Regulating the CFC

NAACP-LDEF, et al, v. Campbell finds a "legitimate government interest" (page 8, line 4) to conduct the CFC. Yet, the Court also finds that there are First Amendment protections which related to the conduct of the CFC. It does this on the basis that "by providing organizations the opportunity to participate in the CFC, the government has, in effect, provided a billboard or a channel of communication" (page 4, line 14). But the Court is absolutely clear that it recognizes "the CFC itself serves the legitimate government interest in regulating interference with employees during the work day, and insuring that organizations with access to employees at the workplace are responsible in the use of monies collected" (page 8, line 4).

Although some have argued that the First Amendment protection is absolute, and therefore that all applicants must be admitted to the campaign, it is clear that the Court in NAACP-LDEF et al v. Campbell recognizes limits on First Amendment rights. The Court, first, recognizes that the Combined Federal Campaign itself is a limit on the First Amendment right to direct access to government employees by individual charitable agencies. The Court very precisely gives criteria which would allow "the legitimate government interest" to be applied. It mentions "fraud, crime and undue annoyance" (page 8, line 4). For budget-based criteria, it holds that there must be a "screening of the budget." And percentage base restrictions cannot be "unformulated" (page 6, line 19). Again, to exclude organizations, evidence must be presented which is "appropriate" (page 7, line 22). And the Court says such criteria cannot be established "cavalierly" (page 7, line 27).

Therefore, it is clear that the Court in NAACP-LDEF et al v. Campbell recognizes a legitimate government interest to regulate in this area. This interest likewise is recognized in other strong First Amendment protection cases, such as Schaumburg v. Citizens for Better Environment (44 US 620, 87 L E d 2nd 73-100 S C t 826).

III. The First Amendment and the Need for Precision

The Court, in NAACP-LDEF et al v. Campbell, however, notes: "it is clear the government must meet First Amendment strictures in its regulations concerning access to this channel of communication." The Court, further, sets the criterion by which First Amendment rights can only be limited: "when the government restricts First Amendment activities, the restriction must at the outset be set forth with precision" (page 8, line 12).

The Court, therefore, recognizes both a legitimate government interest in this area and the necessity that this be balanced against First Amendment rights. Constitutionally, all such limitations must be set forth with precision.

IV. Decisions for the 1981-1982 Campaign

The one clear fact about the CFC is that its standards lack precision. Therefore, I do not find that the government interest, as represented in the current standards of the Manual, is drawn at present with enough precision to meet First Amendment protections.

One alternative is to discontinue the campaign. Yet, in a period of fiscal constraint in government, the survival of sources of private charity to compensate for what government cannot spend is an important consideration. The CFC is a major source of income for American charities. The charities it supports, for the most part, provide services which are essential for America's and the world's needy. This decision, however, should be evaluated again next year.

The ideal solution this year, assuming that the campaign should continue, is to revise the regulations to make them more in accord with the precision required by the First Amendment. I have come to the reluctant conclusion that it is too late to do so for this year's CFC. Such regulations would have an *ex post facto* unfairness and, for practical reasons, it is probably too late in the planning process to make the wholesale revisions which are necessary.

The only remaining alternative is to continue the CFC but to apply the Manual regulations liberally, to make access relatively easy. The government interest is protected by exercising some restrictions, while First Amendment considerations become paramount in the light of the vague standards. This is the course we have chosen for this campaign.

V. Applications Not Approved

Using the very liberal interpretation referred to above, only ten applications are not recommended for approval to admission to the CFC. All of these are rejected only for severe departures from the regulations. The following are not included because applications were not even completed: Interfaith Hunger Appeal, Japanese American Citizens League, and National Association to Aid Fat Americans. The Asthma and Allergy Foundation is not recommended because it does not require any financial reports at all of its subordinate units. The Meharry Medical College is not recommended because of inconsistencies found in its financial reporting to OPM; similar difficulties were encountered with the National Concilio and the Natural Resources Defense Council. The National Council on Aging and the National Association for the Deaf are turned down for their *extreme* lack of public support: the former raises only one percent of its revenue from the public directly and the latter only two percent. The Center for Science in the Public Interest is turned down because it prepares no annual report to the public.

VI. Borderline Cases

Seven applications were denied by the Eligibility Committee on grounds that the submitting agencies were not health and welfare groups, but rather political or advocacy groups. There was also the difficulty which arose in last year's CFC decision regarding whether they provide direct services, as required by the Manual. This is the matter directly touched on the NAACP Legal Defense and Education Fund, Inc., et al v. Campbell case.

I find some merit in the argument that these are not agencies which fall under Executive Order 10927. There is also logic to the direct vs. indirect services distinction. The difficulty is that the Manual does not define either of these criteria with the specificity required by the Court. It is clear the Court has not excluded these as criteria, but has excluded these criteria as presently defined. The Court held: "what the Court has determined here--and all it has determined--is that the 'direct services' requirement, as presently employed, does not have the precision necessary to comport with constitutional requirements" (page 8, line 12).

Nonetheless, since nothing has been done since the Court case to define these criteria more precisely, I conclude that these agencies must be allowed to participate in the present campaign. These questions, however, are among those that will be reviewed for the next campaign.

The second difficult decision involves Planned Parenthood-World Population (PP/WP). Serious procedural questions have been raised regarding the eligibility of this agency. (1) A question is raised whether the 12 percent of funds raised directly from the public is sufficient to represent the Manual Section 5.21 requirement for participation in the CFC based upon broad support from the general public. This low percentage raised from direct contributions does seem too low to demonstrate this support. Yet, I do not find the standards precise enough on this matter. (2) Questions were raised before the Eligibility Committee regarding whether this agency meets the Section 5.21 provision that "such services must be consistent with policies of the United States Government." Not all of the facts are clear here, but it is relevant to note that in a letter of April 13, 1981, Planned Parenthood-World Population stipulated that it does not purchase, nor permit its grantees to purchase, Depo-Provera as claimed in testimony before the Eligibility Committee. PP/WP also has stipulated that no funds "currently being used...provide abortion services in our international program." (3) Questions were also raised whether the agency meets the Section 5.24 criterion that "it has earned good will and acceptability throughout the United States." Evidence was presented showing material derogatory to one religious group. It should be noted, however, that the material was distributed by the Planned Parenthood Association in Chicago and not Planned Parenthood-World Population, the group under consideration here. (4) The Eligibility Committee declared that the accounting standards used by PP/WP are only "substantially" in accord with the standards in the Manual. This agency, however, is not unique in failing fully to meet these standards. (5) Therefore, I find that Planned Parenthood-World Population should not be excluded from the campaign, since the Manual standards lack First Amendment precision, and/or that the facts presented are in doubt.

The agencies covered by this Section, consequently, are given admission to this CFC campaign, as well as all other agencies which have submitted applications, other than those listed in Section V. above. The recognized campaigns and agencies are listed on the covering memorandum.

VII. Summary

The general public naturally is concerned about the lack of precision in the standards of the current Manual, and the resulting looseness of eligibility criteria in the 1981-82 Combined Federal Campaign. As a partial protection of the "government interest," some very broad restrictions are applied in Section V. Yet, the general rule for the 1981-82 CFC, is that most agencies will be admitted to the CFC and that all admitted agencies will be eligible for designated funds.

For the 1982-83 campaign, the public may be assured that adequate standards will be promulgated, in appropriate regulatory format, and that the resulting eligibility criteria will be precise enough to respect both First Amendment rights and the "legitimate government interest."

Donald J. Devine
Director

6/9/81
Date

APPENDIX 4

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED
✓ AUG 31 1983
JAMES F. DAVEY, Clerk

PLANNNED PARENTHOOD FEDERATION :
OF AMERICA, INC.,
Plaintiff, :
v. : Civil Action No. 82-2162
DONALD J. DEVINE, :
Defendant. :

MEMORANDUM OPINION

This dispute centers on the classification of a charitable organization as a particular type of participant in the Combined Federal Campaign (CFC), the annual charitable fund-raising drive conducted by the United States Government among its employees. Plaintiff Planned Parenthood Federation of America, Inc., an organization devoted to the encouragement of family planning, has brought this action against defendant Donald J. Devine, Director of the Office of Personnel Management (OPM) under whose auspices the CFC is administered. Plaintiff maintains that the manner in which defendant altered its status from an International Service Agency (ISA) to a National Service Agency (NSA) on July 23, 1982, violated plaintiff's rights under the first and fifth amendments as well as the Administrative Procedure Act (APA). Consequently, plaintiff requests declaratory relief that its rights were abridged and injunctive relief barring defendant from treating plaintiff as an NSA with respect to the 1982 CFC. This matter is before the Court on cross-motions for summary judgment. There are no material facts in dispute,* see Fed. R. Civ. P. 56, and since the manner in which plaintiff was classified as an NSA contravened its rights under the Constitution and the APA, the motion for summary judgment by plaintiff will be granted.

I. Factual Background

Before describing the precise manner in which the classification of plaintiff as an NSA was accomplished, it is necessary to discuss briefly how the CFC generally is administered.** There are five voluntary groups in which charitable organizations desiring to participate in the CFC are classified: United Way Agencies (local united funds or community chests recognized by the United Way of America), National Health Agencies, the American Red Cross,

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* The events that transpired when plaintiff was classified as an NSA are not subject to material dispute. The legal significance of these events and the characterizations that the parties wish to attach to the events, however, are subject to serious disagreement.

** For a more detailed explanation of the operation of the CFC, see National Black United Fund, Inc. (NBUF I) v. Devine, 667 F.2d 173, 174-76 (D.C. Cir. 1981); NAACP Legal Defense and Educational Fund, Inc. (NAACP LDF II) v. Devine, 560 F. Supp. 667, 670-71 (D.D.C. 1983).

International Service Agencies, and National Service Agencies. To participate in the CFC, NSAs and ISAs must satisfy varying requirements. For example, NSAs must be approved by the nationwide campaign and by each local CFC in which they desire to participate in order to ensure that the NSAs provide "direct and substantial services" to the public in each local CFC. *See* *National Black United Fund (NBUF II) v. Devine*, Civil Action No. 81-2531 (D.D.C. Nov. 17, 1981) (upholding requirement of "direct and substantial services" against challenges under APA and first amendment for vagueness). In contrast, ISAs must obtain approval only from the nationwide campaign since a requirement of a local presence would be inconsistent with the fact that ISAs generally perform their services overseas. When federal employees contribute to the CFC, they have the option of designating that a particular charitable organization(s) should receive their contributions or of allowing their undesignated funds to be distributed in a manner determined by the local CFC.

With this thumbnail sketch of the essential elements of the administration of the CFC, attention now can be directed to the events surrounding the classification of plaintiff as an NSA. For thirteen years, including the 1981 CFC administered by the defendant in the present action, plaintiff was classified as an ISA. On July 6, 1982, OPM published final regulations which, *inter alia*, established standards for eligibility for the participation of charitable organizations in the CFC. See 47 Fed. Reg. 29496-29512. Apart from continuing the "local presence" requirement for NSAs,* these regulations made no attempt to define differences between NSAs and ISAs. On July 23, 1982, the National Eligibility Committee (an advisory group convened to consider what charities should be admitted to the CFC) recommended that plaintiff should be excluded from the 1982 CFC.** Notwithstanding this recommendation, OPM issued a press release on the same date which stated:

> "As much as I agree with their view that Planned Parenthood, because of its role in promoting the detestable practice of abortion, should not receive funds by this route, I am legally bound to admit any organization which

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* Defendant suggests that the regulations of July 6, 1982, "provide a common-sense standard - provision of services overseas - for treating an organization as international for purpose of the local presence requirement." Defendant's Statement of Material Facts (SMF) 36. The regulatory provisions that defendant cites for this proposition, see 5 C.F.R. §§ 950.309(a)(2), 950.405(a)(6) & 950.407, provide no such standard. That the July 6th regulations give no guidance for distinguishing between ISAs and NSAs is confirmed by defendant's concession that an unpublished, draft memorandum was the basis for the decision to classify plaintiff as an NSA instead of an ISA. See Defendant's SMF 37. Assuming arguendo that any standard to distinguish ISAs from NSAs can be derived from the July 6th regulations, the critical point is that such an implied standard was not relied upon in the classification decision of July 23, 1982. See Defendant's Letters Denying Plaintiff's First and Second Requests for Reconsideration (August 2 and 5, 1982).

** Of the 117 charitable organizations that had participated in prior CFCs, plaintiff was the only one that the National Eligibility Committee recommended should not be admitted to the 1982 CFC.

> meets the technical membership requirements," Devine declared. "Therefore, I am reluctantly approving Planned Parenthood for membership in the CFC in 1982. I do believe, however, that this matter is ripe for legislative solution, so that abortion groups can be excluded from the campaign in the appropriate legal manner."

That evening, however, defendant determined that plaintiff should be admitted to the CFC as an NSA rather than an ISA for the domestic campaign. Accordingly, a letter was sent to plaintiff that day advising that it had been classified as an NSA.

There is no dispute that the basis for the classification of plaintiff as an NSA on July 23, 1982, was a draft memorandum containing handwritten insertions and changes. At the time that defendant reclassified plaintiff, there had been no public notice of the draft memorandum. In fact, it appears that only defendant, an assistant, and OPM's Office of General Counsel (that assisted in drafting the memorandum) knew that it existed on July 23, 1982. Despite numerous consultations with OPM staff after being notified of the classification decision, plaintiff was provided no explanation for its classification as an NSA. On July 29, 1982, plaintiff sent a letter to defendant requesting reconsideration of its classification as an ISA. Defendant responded by letter on August 2nd denying the request for reconsideration.* Plaintiff filed the instant action on the next day with an application for a temporary restraining order. On August 4, 1982, defendant finally revealed his basis for classifying plaintiff as an NSA when he disclosed the decisional standards in the Federal Personnel Manual (FPM). Those standards provided that "[a] voluntary agency whose services are rendered exclusively or in substantial preponderance overseas will be assigned to ISA" and "all other voluntary agencies, including those of a mixed character, will be assigned to NSA." FPM Letter No. 950-1, § 2(d)(1) & (3) (August 4, 1982). At the same time that the decisional standards were disclosed, defendant invited plaintiff to submit a second request for reconsideration, an invitation which plaintiff accepted by gathering all the materials that it believed relevant and submitting them to defendant that day. On the next day, defendant denied the second request for reconsideration and for the first time provided a full explanation for the July 23rd action that classified plaintiff as an NSA.

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* For the first time, defendant attempted to provide some explanation for his action. The August 2nd denial of the request for reconsideration provides in pertinent part:

> The distinction between ISA and NSA is the distinction between charitable services rendered overseas and those that are provided domestically to Americans. PPF of A's national application materials plainly indicate that its activities are significantly domestic in scope. PPF of A reported a total of $158,025,333 in support and revenue in 1980. Only $16,861,383, representing just 10.6% of that revenue, was expended for international services.

While defendant's reasoning was revealed to some extent, plaintiff was unaware of the draft memorandum upon which its classification as an NSA rested. Hence, although it may be charitably claimed that plaintiff was given some hint of the basis for its classification, see Defendant's SMF 39, there can be no basis for the assertion that the August 2nd letter informed plaintiff of defendant's assignment standards since those standards which were contained in the draft memorandum still had not been disclosed. See id.

The classification of plaintiff as an NSA allegedly has injured plaintiff in several respects. The most serious financial effect is that being classified as an NSA excluded plaintiff from some local CFCs,* depriving it of both designated and undesignated contributions. In addition, plaintiff anticipates receiving far less undesignated funds from the 1982 CFC because NSAs traditionally are awarded a much smaller percentage of undesignated contributions than are

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* Despite the fact that the regulations of July 6, 1982, refer to undesignated funds as "deemed designated funds," the Court will employ the terminology in use prior to the promulgation of the regulations for convenience. Defendant has submitted an affidavit suggesting that in the largest local CFC, plaintiff would receive approximately half the undesignated funds received from the 1981 CFC if it would have been classified as an ISA for the 1982 CFC. See Affidavit of William A. Schaeffler, Director of the National Capital Area CFC. Although this affidavit is probative on the amount of undesignated funds lost by plaintiff due to classification as an NSA, there appears to be no dispute that plaintiff would receive a substantial amount of additional undesignated funds - approximately $100,000 - if it would be viewed as an ISA for the 1982 CFC.

ISAs.* A final effect that classification as an NSA may have had on contributions is that some potential contributors may have contributed less to plaintiff because they attached some significance to its prior status as an ISA or became confused by the reclassification for 1982 as an NSA. The last injury allegedly suffered is the loss of the established relationship with other ISAs and the coordinating body for the ISAs, International Service Agencies - Federal.*

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* The litigants have submitted a series of affidavits concerning how many local CFCs excluded plaintiff and the reasons for those exclusions. Accepting defendant's representations which should portray defendant at least as favorably as plaintiff's representations, 113 local CFCs denied plaintiff's participation but plaintiff successfully appealed those determinations in 86 instances. *See* Affidavit of Kent Bailey, Program Analyst at OPM. Of the 27 campaigns where OPM upheld plaintiff's exclusion, 14 were appeals submitted to OPM in an untimely manner, 9 were instances where a local presence had not been demonstrated, 2 were cases where the initial applications to the local CFC were untimely, and 2 were local CFCs where plaintiff's affiliate already was participating. *See id.* Aside from the two campaigns where a representative of plaintiff was included, defendant thus concedes that plaintiff was excluded entirely from 24 local CFCs. In addition, however, defendant has not disputed that in 29 of the "successful" appeals, the local CFCs still excluded plaintiff because OPM's action was too late. *See* Affidavit of Captain Robert S. Brookings, Director of Plaintiff's CFC Activities ¶ 7. Moreover, plaintiff was informed of its exclusion in 17 other CFCs long after the time to appeal to OPM had passed. *See id.* ¶ 8. Hence, plaintiff was not permitted to participate in approximately 70 local CFCs in which plaintiff estimates over $125,000 in designated contributions would have been received. *See id.* ¶ 9.

II. Legal Analysis

To challenge the manner in which defendant classified plaintiff as an NSA, plaintiff has advanced four legal arguments. First, plaintiff contends that the classification violated its first amendment rights because final agency action rested on a secret rule defining ISAs. Second, plaintiff maintains that the classification violated its first amendment rights because it would not have occurred if defendant had not determined to penalize plaintiff for its stance in favor of abortion. Third, plaintiff claims that the definition of ISAs that it allegedly did not satisfy was unconstitutionally vague under the first amendment. Fourth, plaintiff suggests that defendant failed to comply with the APA in releasing the rule defining ISAs on August 4, 1982, because the rule was not published in the Federal Register. Defendant has filed a motion for summary judgment on all four claims while plaintiff has filed a similar motion on all claims except defendant's alleged bias against plaintiff as a motivating factor for classification as an NSA. For the following reasons, the Court will grant plaintiff's motion for summary judgment on the ground that employing a secret rule to classify plaintiff as an NSA violated plaintiff's rights under the first amendment and the APA.

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* The ensuing analysis will rest on the undisputed injuries of the loss of undesignated funds and the exclusion from some local CFCs which bars the receipt of designated funds. To substantiate the last two alleged injuries, plaintiff would have to make satisfactory showings at an evidentiary hearing.

Although only plaintiff's first claim with the additional basis of the APA provides justification for granting summary judgment to plaintiff, the other three claims merit some attention. Initially, there can be no doubt but that defendant's motion for summary judgment on the issue of defendant's animus toward plaintiff as the cause of the classification is ill-founded. The Supreme Court has established clear standards by which to evaluate this claim. *See Mount Healthy City School District Board of Education v. Doyle*, 429 U.S. 274 (1977). Plaintiff must demonstrate by a preponderance of the evidence that defendant's decision was made by reason of the exercise of its first amendment rights to encourage family planning through various means including abortion. *See id*. at 283-84 Defendant then would have to demonstrate by a preponderance of the evidence that he "would have reached the same decision" even if plaintiff had not engaged in its protected first amendment conduct. *Id*. at 287. Defendant's July 23, 1982, press release expressing that he found plaintiffs exercise of its first amendment rights to promote abortions detestable is alone sufficient to create a material issue of fact. Combining defendant's statement with his recommendation for an executive order that would bar any pro-abortion charities from the CFC and the last-minute effort to classify plaintiff as an NSA (and failing to subject other ISAs to the new ISA definition until a somewhat later time) provide an ample basis to support the inference that defendant's bias motivated his decision. Moreover, these same undisputed facts block defendant's claim on summary judgment that plaintiff would have been classified as an NSA regardless of its pro-abortion position.* Of course, defendant is correct that all of these facts also may be explained by innocuous reasons. Yet, it is hornbook law that where undisputed facts fairly support conflicting inferences - particularly where bias or animus is at issue - a trial is essential.** Accordingly, defendant's motion for summary judgment on the issue of bias employed to punish the exercise of first amendment rights must be denied.

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* For example, defendant's recommendation of an executive order barring any pro-abortion group from the CFC creates a material issue of fact whether the NSA classification would have resulted absent plaintiff's exercise of its first amendment rights.

** Defendant contends that he had no personal knowledge of the distribution arrangement for undesignated funds from the 1982 CFC. Yet, plaintiff still is entitled to prove that defendant contemplated that the undesignated funds would be distributed in a manner similar to past CFCs when ISAs received significantly greater undesignated funds than NSAs. Defendant has not denied that he was aware that classifying plaintiff as an NSA forced plaintiff to demonstrate a local presence in each of the local CFCs in which it wished to participate.

While the grant of summary judgment will not rest on plaintiff's claims of vagueness and inadequate notice, defendant should be apprised if he chooses to present an ISA definition through appropriate means that there is a substantial likelihood that the present rule would have to be defined more extensively to withstand a vagueness challenge and would have to be published at the appropriate time in the Federal Register. Two recent cases in this judicial district have considered vagueness challenges to definitions provided by OPM for the CFC. See NBUF II v. Devine, supra; NAACP Legal Defense Fund (NAACP LDF I) v. Campbell, 504 F. Supp. 1365 (D.D.C. 1981). In NBUF II, the definition of "substantial services" was upheld because NBUF was among the organizations proposing a virtually identical standard. Further the definition provided both a series of examples of what would constitute "substantial services" and outlined certain activities which would not be required to satisfy the definition. See Slip op. at 3, 4 & 9. In contrast, the court in NAACP LDF I struck down as vague OPM's definition of "direct services" because only OPM could explain its definition by stating that certain other charitable organizations satisfied the definition. See 504 F. Supp. at 1367. The instant case appears much closer to NAACP LDF I than to NBUF II. The ISA definition provides no examples of "overseas" activities or activities unnecessary to satisfy this definition and plaintiff had not even a vague hint that the definition was forthcoming. Hence, all that the definition provides is a synonym for the term "international," - overseas. Moreover, although the terms modifying "overseas" - "substantial preponderance" and "mixed character" - "may appear at first glance to have a plain, unambiguous meaning sufficient to guide governmental decisionmaking," id., there is a significant danger that these terms absent some guidelines are too imprecise to withstand a vagueness challenge.*

The manner in which defendant classified plaintiff as an NSA also is susceptible to serious challenge under the APA for failure to publish the ISA definition in the Federal Register. Defendant's response is that the ISA definition is an interpretive rule that does not necessitate such formal notice. Defendant contends that the ISA definition merely provided interstitial refinement for an ISA definition present in the regulations of July 6, 1982. There is a strong argument, however, that there is no definition of "international services" in the July 6th regulation so that the justification for construing the ISA definition as an interpretive rule is questionable. Assuming _arguendo_ that the ISA definition is an interpretive rule, it does not appear that defendant has provided any rebuttal to plaintiff's contention that it was OPM practice not to use the Federal Personnel Manual (FPM) for any CFC rules beyond housekeeping matters such as the mechanics for payroll deductions. _See_ Deposition of Joseph Patti, at 70. Therefore, past OPM practice may support the conclusion that notice of the ISA definition in the FPM was inadequate under the APA.

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* Defendant's application of the ISA definition also may provide the basis for an equal protection claim. Given plaintiff's assertion that other ISAs were not examined under this definition until several days after plaintiff was classified as an NSA and that other ISAs were not classified as NSAs despite having weaker bases to remain ISAs than plaintiff, it appears that plaintiff can claim that the application of the ISA definition deprived it of equal protection.

Despite the Court's serious reservations with the precision of the ISA definition and the adequacy of notice under the APA, the basis for granting summary judgment to plaintiff is that classifying plaintiff as an NSA with a secret rule violates fundamental requirements of the first amendment and the APA. Before discussing the specific rule at issue, it is necessary to explain the role of the first amendment in evaluating the manner in which plaintiff was classified as an NSA. Initially, it is well established that charitable solicitation is protected activity under the first amendment. _See_ _Schaumburg v. Citizens for a Better Environment_, 444 U.S. 620, 632 (1980). As Judge Gesell has cogently explained, regulations affecting access to the CFC are subject to first amendment scrutiny:

> Although the mechanisms of the CFC drive do not allow for the sort of persuasive, informative activity that is often present in solicitations on street corners or door-to-door, the participating organizations are afforded favorable publicity concerning their objectives and the money received may be used in some instances for activity that falls squarely within the First Amendment. Furthermore, by providing organizations the opportunity to participate in the CFC, the government has, in effect, provided a billboard or channel of communication through which organizations can disseminate their appeals to federal workers . . . . It is clear that the government must meet First Amendment strictures in its regulations concerning access to this channel of communication, which is, in fact, the only channel by which organizations can appeal to government employees at their work place.

NAACP LDF I v. Campbell, 504 F. Supp. at 1366-67 (citations omitted). *See* *NBUF I v. Devine*, 667 F.2d at 178-79 & n.25 (endorsing Judge Gesell's view of the application of first amendment strictures to CFC regulations). Hence, defendant's classification of plaintiff as an NSA must be examined under the first amendment.*

Having concluded that the manner in which defendant classified plaintiff as an NSA must meet the requirements of the first amendment, it remains necessary to determine what particular requirements were not satisfied. When defendant classified plaintiff as an NSA on July 23, 1982, the draft memorandum that concededly formed the basis for defendant's decision was a secret rule that could have no legal effect. In essence, the rule defining ISAs constituted the most extreme form of vagueness, a secret rule known only to the individuals that enforce it. The United States Court of Appeals for the District of Columbia Circuit has outlined the dual policies that underlie the vagueness doctrine. "First, the vagueness doctrine incorporates the idea of notice - informing those subject to the law of its meaning . . . . Second, the doctrine is concerned with providing officials with explicit guidelines in order to avoid arbitrary and discriminatory enforcement." Big Mama Rag, Inc. v. United States, 631 F.2d 1030 (D.C. Cir. 1980).

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* Defendant has argued at length that because the classification as an NSA did not exclude plaintiff entirely from the CFC, first amendment protection is unwarranted. The Court rejects this expansive argument which suggests that severe obstacles could be imposed to limit the ability to conduct charitable solicitation without activating first amendment interests. Moreover, plaintiff has been totally excluded from participation in approximately 70 local CFCs as a direct result of its classification as an NSA. Plaintiff would have been included automatically in these local CFCs and would have received both designated and undesignated funds if it would have been classified as an ISA. In addition, it is important to note that it is conceded that exclusion from at least nine CFCs occurred due to the failure to show a local presence which only NSAs must demonstrate.

Applying the policies underlying the vagueness doctrine to the instant rule defining ISAs demonstrates that the rule neither provided adequate notice nor imposed any check on arbitrary and discriminatory enforcement. At the time of final agency action when OPM notified plaintiff of its classification as an NSA on July 23, 1982, plaintiff had no notice of any rule relating to the definition of ISAs. In fact, plaintiff did not become aware of the rule until after defendant denied plaintiff's first request for reconsideration. Therefore, the rule defining ISAs was unconstitutionally vague because plaintiff had no notice of the rule before defendant applied the rule to plaintiff. Applying a secret rule also imposes no restraint on the administrator's ability to engage in arbitrary and discriminatory enforcement. As long as the rule is undisclosed, the administrator has boundless discretion to selectively enforce the "rule" or to change the substance of the "rule" from one day to the next if he so desires.* This situation is analogous to that of a licensing authority that regulates speech-related activities through the use of secret guidelines. See, e.g., Police Department of Chicago v. Mosley, 408 U.S. 92, 97 (1972) ("licensing schemes that lodge broad discretion in a public official [impermissible] because of their potential use as instruments for selectively suppressing some points of view"); Shuttlesworth v. Birmingham, 394 U.S. 147 (1969); Cox v. Louisiana, 379 U.S. 536, 555-58 (1968). Thus, "[w]hen the government restricts First Amendment activities, the restriction must at the outset be set forth with precision" NAACP LDF I v. Campbell, 504 F. Supp. at 1368 (emphasis added). In the present case, the rule defining ISAs was not set forth with precision, much less set forth, prior to defendant's decision to classify plaintiff as an NSA.

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* Accepting for the moment that defendant's assertion that the ISA definition of July 23 reflected only his "rough judgment" was not itself a post-hoc rationalization, the assertion confirms that defendant reasonably contemplated changing the secret rule after that rule had been applied to at least one charitable organization in the CFC.

Defendant attempts to avoid the conclusion that the secrecy of the rule defining ISAs necessitates finding the rule void for vagueness by advancing three arguments: 1) the standard applied in classifying plaintiff as an NSA was the same standard that had been in effect throughout the history of the CFC; 2) the July 23, 1982, decision classifying plaintiff as an NSA was only an "initial, preliminary" decision; 3) plaintiff was afforded all the process that any court would require when it was able to make a second request for reconsideration. None of these arguments are persuasive.

Defendant's first argument that the same standard that was employed in past CFCs was relied upon to classify plaintiff as an NSA is simply not credible. Plaintiff has been classified as an ISA for thirteen successive CFCs from 1968 through 1981. It is quite significant that plaintiff was classified as an ISA for the 1981 CFC that was administered by defendant himself who concededly applied the eligibility standards to the best of his abilities during that CFC.* Moreover, at other points in his pleadings, defendant has maintained that the basis for the NSA classification of plaintiff was the ISA definition derived from the July 6, 1982, regulations and contained in the draft memorandum of July 23, 1982. All of these facts combine to demonstrate that there can be no doubt that the standard employed by defendant to classify plaintiff as an NSA had no precedent in prior CFC's.

The second argument advanced by defendant is that standards truly were in place when he decided how to classify plaintiff on August 5, 1982, and that his decision on July 23, 1982, was only an "initial, preliminary" decision. As has been explained previously, this argument at most highlights the chameleon-like potential of a secret rule that provides no check on arbitrary and discriminatory enforcement.* As an effort to shift the date of defendant's decision to postpone the point at which standards had to be in place, it fails as a faulty characterization of the entire administrative process surrounding the classification of plaintiff as an NSA. The July 23rd decision plainly constituted final agency action. Defendant never informed plaintiff that the July 23rd decision classifying plaintiff as an NSA was in any sense tentative or preliminary.** Regardless of what possible action defendant allegedly would have taken after the July 23rd decision,*** the fact remains that the classification of July 23, 1982, fixed plaintiff's status as an NSA. If plaintiff had taken no further action, it would have been treated as an NSA for the 1982 CFC. Hence, the July 23rd decision constituted final agency action notwithstanding defendant's inherent ability to reconsider the decision. Perhaps it is arguable that a "final" decision is not reached until after a motion for reconsideration has been considered. Yet, plaintiff's motion for reconsideration was denied without disclosure of the secret rule (or at best was implicit in the denial of the motion for reconsideration) and plaintiff instituted this action the next day, one day before revelation of the rule in the FPM. A determination of final agency action cannot hinge on the number of invitations for reconsideration that are made. Thus, to avoid a determination of void for vagueness, the standard must have been set forth with precision prior to the July 23rd decision classifying plaintiff as an NSA.

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* Defendant has proferred no reasons why plaintiff's 1981 CFC application varied from the 1982 CFC application in a manner that would have justified classifying plaintiff as an ISA in 1981 and an NSA in 1982.

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* Defendant has pursued contradictory positions. Defendant has attempted to minimize the danger of arbitrary and capricious enforcement of a secret rule by claiming that the rule finally disclosed on August 4, 1982, was identical to the rule defining ISAs in the draft memorandum. Of course, that alleged likeness does nothing to mitigate the fact that a secret standard is effectively no standard since it can be manipulated at will. In addition, defendant's position that the July 23rd decision was preliminary in nature undercuts the asserted unchanging nature of the rule between July 23 and August 4, 1982.

** Defendant was well aware of how to indicate that his decision based on the draft memorandum was only a proposed action or that the rule defining ISAs was only a proposed rule. Yet, defendant never gave any indication that his July 23rd decision was anything other than final.

*** Defendant's assertion that the July 23rd decision reflected only his rough judgment is entitled to less weight because the allegedly flexible nature of the decision is itself a post-hoc rationalization.

The third argument defendant presents to counter a conclusion of void for vagueness is that even if he erred by acting upon a secret rule, he took steps - disclosing the standard on August 4, 1982, and inviting plaintiff to submit a second request for reconsideration which was denied the next day - that adequately remedied any error. In fact, defendant believes that the action he took was as much as any court would have ordered to remedy his earlier reliance on a secret rule. While defendant's allegedly remedial actions address the first policy underlying the vagueness doctrine by giving plaintiff notice immediately prior to the second request for reconsideration, these actions had absolutely no impact on the second policy that use of a secret rule permits arbitrary and discriminatory enforcement.* Because defendant's decision to reclassify plaintiff as an NSA was based on a secret rule, any later explanation was necessarily a post-hoc rationalization that could not be accepted. For example, a licensing authority could always claim that it never exercised discretion in an arbitrary and capricious manner. Similarly, defendant's claim that the secret rule in the draft document was not altered prior to its disclosure does not diminish the need to apply the vagueness doctrine to prevent the opportunity for arbitrary and discriminatory enforcement. The vagueness doctrine applies even where no predisposition by the public official of hostility against a particular group can be can be identified. Where plaintiff freely concedes his hostility toward plaintiff, it becomes even more essential to have a known standard established to check the ability to engage in arbitrary and discriminatory enforcement. Finally, defendant's actions to remedy the effect of a secret rule were insufficient because the only way to correct a secret rule is to start over again with a rule with which plaintiff is aware. In sum, none of the three arguments advanced by defendant avoid the conclusion that the secret rule defining ISAs must be struck down under the first amendment as void for vagueness.

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* Throughout these proceedings, defendant has ignored the concern of the vagueness doctrine with arbitrary and discriminatory enforcement of a secret rule. Instead, defendant has argued that first amendment interests are limited or nonexistent because the CPC is not a public forum, the regulation is content-neutral, and the inhibition on plaintiff's communication is minimal. It already has been discussed why first amendment principles are fully applicable to CPC regulations so that the issue of a public forum is irrelevant. In addition, it is difficult to construe plaintiff's exclusion from approximately 70 local CPCs with an estimated loss of over $100,000 in designated funds as a minor inhibition on plaintiff's communication. Yet, a broader principle should be addressed. Aside from the discussion in NBUF I regarding whether first amendment principles should be applied to the CPC, see 667 F.2d at 178-79, the first amendment analysis outlined in NBUF I, which defendant apparently has followed, does not appear relevant to the separate requirement of the vagueness doctrine. Assuming arguendo that the NBUF I analysis is applicable to the instant case, defendant has made no attempt to identify a compelling interest for the ISA definition.

The foregoing discussion explains why defendant's use of a secret rule abridged plaintiff's rights under the first amendment. An independent basis for invalidating defendant's classification of plaintiff as an NSA is that reliance on a secret rule constitutes arbitrary and capricious conduct under the APA. The APA is designed to require some degree of procedure in the administrative process which includes a minimum requirement that there should be public notice of any rule upon which an agency grounds an action involving a particular organization. Classifying plaintiff as an NSA based on a secret rule is such a radical departure from the normal operation of the administrative process that it falls short of compliance with the APA. More precisely, defendant's July 23rd decision to classify plaintiff as an NSA had no legal justification because the acknowledged basis for the action was secret. Any justification that is later supplied constitutes a textbook example of a post-hoc rationalization which cannot uphold agency action. Thus, defendant's use of a secret rule must be struck down under either the first amendment or the APA.

An Order consistent with this Memorandum Opinion will be entered this date.

Norma Holloway Johnson
NORMA HOLLOWAY JOHNSON
UNITED STATES DISTRICT JUDGE

DATED: August 31, 1983

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED
✓ AUG 31 1983
JAMES F. DAVEY, Clerk

PLANNNED PARENTHOOD FEDERATION :
OF AMERICA, INC.,
Plaintiff, :
v. : Civil Action No. 82-2162
DONALD J. DEVINE, :
Defendant. :

ORDER

Upon consideration of plaintiff's motion for summary judgment on all issues except bias as a motivating factor for the challenged action, defendant's cross-motion for summary judgment on all issues, the respective oppositions, the accompanying memoranda of law, the argument of counsel, and the entire record herein, it is this 31st day of August, 1983,

ORDERED that defendant's motion for summary judgment be, and hereby is, denied; and it is further

ORDERED that plaintiff's motion for summary judgment be, and hereby is, granted; and it is further

ORDERED and ADJUDGED that defendant's reliance on a secret rule to classify plaintiff as an NSA on July 23, 1982, violated plaintiff's rights under the first amendment and the APA; and it is further

ORDERED that defendant, his agents, and employees be, and hereby are, directed to take all necessary steps to enable plaintiff to participate as an ISA in the 1982 CFC to the maximum extent possible; and it is further

ORDERED that the above-captioned matter be, and hereby is, dismissed.

Norma Holloway Johnson
NORMA HOLLOWAY JOHNSON
UNITED STATES DISTRICT JUDGE

APPENDIX 5

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PLANNED PARENTHOOD FEDERATION
OF AMERICA, INC. *et al.*,

Plaintiffs,

v.

THE HONORABLE DONALD J. DEVINE,

Defendant.

Civil Action No. 83-2118

FILED

JUL 29 1983

JAMES F. DAVEY, Clerk

STIPULATION & ORDER

It is hereby stipulated and agreed by the parties, subject to approval of the Court, as follows:

1. The defendant, his agents and subordinates will not exclude plaintiffs Planned Parenthood Federation of America, Inc., and Native American Rights Fund from participation in the Combined Federal Campaign with respect to the solicitation of "designated contributions," as that term is used in the Memorandum Opinion filed July 15, 1983, in NAACP Legal Defense and Educational Fund, Inc., et al. v. Donald J. Devine ("NAACP LDF III"), on the basis of the provisions of section (2)(b)(1 through 3) of Executive Order No. 12353, as amended by section 1(b) of Executive Order No. 12404 of February 10, 1983.

2. This stipulation is without prejudice to defendant's rights either to appeal from the July 15, 1983, Order in NAACP LDF III or to seek clarification of that Order insofar as that Order addresses the provisions of section (2)(b)(1 through 3) of Executive Order 12353, as amended by Executive Order 12404, or in any other respect not enumerated herein. In the event of an appeal from the July 15, 1983, Order in NAACP LDF III, defendant

will accord to this stipulation the same effect that ultimately is given to the Court's Order of July 15, 1983, in NAACP LDF III by any court competent to review that order.

3. The provisions of paragraph 1 of this stipulation have no greater and no lesser force or effect with respect to plaintiffs Planned Parenthood Federation of America, Inc., and Native American Rights Fund than the provisions of the second decretal paragraph of the Court's Order filed July 15, 1983, in NAACP LDF III, have with respect to the named plaintiffs in that action. The provisions of paragraph 1 of this stipulation shall be construed in conformity with the Court's July 15, 1983, Memorandum Opinion in NAACP LDF III.

4. Plaintiffs hereby withdraw their pending application for a temporary restraining order and agree not to file a motion for a preliminary injunction. The provisions of paragraph 1 of this stipulation shall be construed as a preliminary, and not a permanent, order.

Walt B. Slocombe
WALTER B. SLOCOMBE

GEOFFREY JUDD VITT
Caplin & Drysdale, Chartered

Donald J. Simon
DONALD J. SIMON
Sonosky, Chambers, Sachse &
Guido

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STANLEY S. HARRIS
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ROYCE C. LAMBERTH
Assistant United States Attorney

John D. Bates / MRB
JOHN D. BATES
Assistant United States Attorney

MITCHELL R. BERGER
Assistant United States Attorney

So Ordered: Joyce Hens Green
United States District Judge

Date: July 26, 1983

APPENDIX 6

OFFICE OF PERSONNEL MANAGEMENT

A Public Hearing On:

Admission of Planned Parenthood to the
Combined Federal Campaign

- - -

Friday, September 2, 1983

1:18 p.m.

BEFORE:

DONALD J. DEVINE, Director, Office of Personnel Management
JOSEPH A. MORRIS, General Counsel
RONALD E. BROOKS, Assistant to the Deputy Director

1900 E Street, N. W.
Washington, D. C.

PROCEEDINGS

(1:18 p.m.)

MR. DEVINE: This is an administrative hearing on the application of Planned Parenthood Federation for application into the 1983 Combined Federal Campaign. I've been advised by counsel -- who's got the machine ticking here? Can you turn it off?

MR. MORRIS: To whom does this belong?

MR. DEVINE: I've been advised by counsel that Planned Parenthood has some procedural concerns and would like to address them before any other matters are addressed. Would the person representing Planned Parenthood please take the stand?

MR. SLOCUM: Can we do something about the lights?

MR. DEVINE: That is up to the media.

MR. SLOCUM: Well, I don't see why it has to be directly in my eyes. Can't you point it down a little bit?

MEDIA: No.

MR. SLOCUM: Mr. Devine, Planned Parenthood has been a member of the Campaign for 15 years. We have met all of the technical qualifications.

For the record, my name is Walter Slocum. I'm an attorney at Kaplan and Drysdale here in Washington and I represent Planned Parenthood.

Planned Parenthood has been a member of this campaign for some 14 or 15 years, has met all the technical qualifications. You have yourself found that it met those technical qualifications in both 1981 and 1982.

We have cooperated with every request for information which has been submitted to us. We, despite all of the problems, are willing to cooperate further. In particular, we believe that we clearly meet all of the technical requirements. We do not and cannot possibly satisfy the concerns of the vituperation that were expressed in this room two days ago, but we do meet all of the technical requirements.

I believe this procedure is irregular and a violation of Planned Parenthood's procedural and constitutional rights. We have requested a postponement of the hearing for a reasonable time to allow us to respond, to understand what the questions are that you have asked, and to work out procedures for answering those questions.

We filed our application on July 5th. Although I know that many organizations got follow-up letters after staff review of those applications, no such questions were directed to Planned Parenthood, and my understanding is that most of those questions were about technical matters -- precisely the nominal subject of this meeting.

We received no word at all from OPM about Planned Parenthood's application until August 29th, when we received a letter dated August 22nd asking four questions. Those four questions were answered on August 31st, two days later, and none of those four questions relate to any of the material in the Right to Life Committee questions which you have forwarded to us.

At the eligibility committee hearing two days ago, we were subjected to long harangues by opponents of Planned Parenthood over a range of wild charges. We were not provided with the one document we were subsequently provided with, which is Mr. O'Reilly's number-crunching.

Ms. Wattleton, who is the president of Planned Parenthood, stood at this podium, made her statement and asked if there were any questions. No questions were asked. At 5:30 p.m. yesterday, we received this 45-page document listing a whole new set of charges, with a cover letter from you announcing that this hearing would be held today to answer those charges.

Your cover letter does not specify which of the charges you regard as relevant, but only says, "the unresolved issues to which we refer relate to the financial recording and auditing data that had been received in support of your organization's application. Statements submitted by the Right to Life Committee have raised a series of questions about whether your organization satisfies the financially-related criteria for eligibility."

And it then says various other things. It says, "We request you bring to the hearing any and all financial data that addresses the points raised in the statement of the National Right to Life Committee."

The so-called questions by the Right to Life Committee -- many are not even, on their face, audit or financial questions, but about that Committee's complaints about other problems in the world. And we are not clear which, if any, of these are the ones which concern you.

We were requested to bring any and all financial data that addressed these points. As you know, the headquarters of this organization is in New York. It is a large organization with a substantial budget and it is a totally unreasonable request that we should bring all of the financial data to deal with unspecified questions to a hearing originally to be held less than 18 hours later, and deferred only because of the court proceeding that involved both me and Mr. Morris this morning.

The document that we are handed is, as I say, 45 pages long; it has various accusations with excerpts from documents. Normally, excerpts were given -- for example, page 290 and 291 of a hearing held some years ago; documents three years old, and it is not clear what the context of many of those statements is.

We have offered repeatedly in the period since we got that notice to sit down with OPM, to understand what the questions are, to explain our position. We are perfectly willing to do so, if it is your practice to do so, to do that in a public forum.

We are not prepared to be a party to a proceeding in which OPM is not the only hearing officer, but every opponent of Planned Parenthood is given a free rein to ask questions as well.

I have not been able to determine what is your intention with respect to the other organizations which you say have an interest in this proceeding which were given notice. My understanding is that, in practice, the only notice which was given was to opponents of Planned Parenthood.

In addition to these fundamental questions of due process, there is an issue of equal protection. Serious financial questions were raised by the Committee, not programmatic opponents of a great many other organizations that had applied to the Campaign, from the March of Dimes to the National Jewish Hospital's asthma operation; there's a great, long list of them. None of those have been required to proceed to a second hearing.

Before we proceed, I would like to request a statement of which of these issues it is that is of concern to you, a statement of what the procedure for this hearing is going to be, and to request, if additional information is required that goes beyond what I am able to supply on the basis of my consultation with Planned Parenthood people in terms of response to these questions, a reasonable period of additional time to provide that information.

MR. DEVINE: Listen, Mr. Slocum. Everybody knows where I stand with regard to the kind of practices that Planned Parenthood does. They promote abortion. I think that's detestable. I think in a just world, it has nothing to do with a charitable drive.

So I'm going to lean over backwards to give you any kind of procedural protections that you want. I'm going to adjourn this hearing right now and have you get together with my attorney, Mr. Morris, and work out any details that are acceptable to you within a reasonable amount of time, early next week.

MR. SLOCUM: I am glad that you have taken that position. That's a request which I made immediately upon receiving the document, which has been met with adamant refusals until this point.

MR. DEVINE: Adjourned.

(Whereupon, the hearing was adjourned at 1:28 p.m., sine die.)

APPENDIX 7

LAW OFFICES
CAPLIN & DRYSDALE
CHARTERED
1101 SEVENTEENTH STREET, N.W.
WASHINGTON, D.C. 20036
(202) 862-5000

September 2, 1983

Mr. Joseph A. Morris
Office of Personnel Management
Office of the General Counsel
1900 E Street, N.W.
Room 5H 30
Washington, D.C. 20415

Dear Mr. Morris:

Pursuant to our second discussion of this afternoon, I enclose a list of the issues revised in accordance with your request. This is now the agreed list of all issues to which the hearing will be addressed.

Sincerely yours,

Walter Slocombe

WS/kg

Enclosure

ISSUES

The hearing Wednesday, September 7, will be confined to the following issues:

1. What agency is applying: Planned Parenthood Federation of America, Inc. (PPFA), or the affiliates and PPFA combined?

2. Affiliates financial data:

- Why was it submitted at all?
- Why (or in what sense) is it "estimated?"
- Why (or whether) it is not audited or certified?
- Is the audit in accord with accounting standards that satisfy the regulations?

3. Is the 50% test met? (§ 950.405(a)(2)(iii))

4. Is the alternative 20% test met? (§ 950.405(a)(2)(iii))

5. Is it proper to count in-kind contributions as public support under the 20% test?

6. Is it proper to count Medicaid receipts as non-Federal support under the 50% test?

7. Is there compliance with bar on "deceptive publicity?" (§ 950.405(a)(5))

8. Is interest on loan funds treated as public support?

9. Is what is shown as public support properly included under generally accepted accounting principles or applicable law? Specifically, does public support include any contributions that are not tax-deductible because of the purpose for which given?

APPENDIX 8

OFFICE OF PERSONNEL MANAGEMENT

A Public Hearing On:

ADMISSION OF PLANNED PARENTHOOD TO THE
COMBINED FEDERAL CAMPAIGN

Wednesday, September 7, 1983

2:40 p.m.

BEFORE:

DONALD J. DEVINE, Director, Office of Personnel Management

STAFF PRESENT:

DANIEL R. LEVINSON, Deputy General Counsel
RONALD E. BROOKS, Assistant to the Deputy Director

1900 E Street, N. W.
Washington, D. C.

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PROCEEDINGS

(2:40 p.m.)

MR. DEVINE: This is the second administrative hearing dealing with the application of Planned Parenthood to join the Combined Federal Campaign.

At the last meeting, objection was made to the lack of sufficient time to prepare materials and it was agreed that counsels would meet to decide when and how the hearing would proceed to the best interests of all involved.

It has been agreed that Planned Parenthood will present the evidence that has been requested first; that questions will be made only by the government's panel from the Office of Personnel Management. Then other interested parties will be able to submit their testimony on the matter.

We've also decided to give more public participation than these rather restricted guidelines have suggested. We have made available in the back of the room a box and some three-by-five type cards. People can ask questions of the panel. If the panel believes that they're relevant, they will, at their discretion, decide whether those questions are proper to be asked.

It was agreed by counsels that the nine general areas in which this hearing will focus: first, what agency is applying to the Combined Federal Campaign; the question of data for affiliates which was not submitted.

Third, does Planned Parenthood meet the 50 percent test of the regulations? Fourth, does it meet the 20 percent test? Fifth, is it proper to count in-kind contributions as public support under the 20 percent test?

Sixth, is it proper to count Medicaid receipts as non-federal support under the 50 percent test? Seven, is there compliance with the bar on deceptive publicity, 950.405 (a)(5)?

Eight, is interest on loan funds treated as public support? Nine, is what is shown as public support properly included under the generally accepted accounting principles or applicable law?

These are the nine general areas which will be pursued at this hearing. These are all asked in accord with the regulations of the Combined Federal Campaign, especially the eligibility requirements of 950.405(a).

This section of the regulations sets several criteria which any organization requesting admittance into the Campaign must meet to be eligible for the Campaign. During this year's consideration of applications, 20 percent of the applications were rejected on grounds under Section 405(a).

This is a legitimate interest of the government to see that we have accurate information given to us by those who wish to participate in the government's charitable campaign.

It's on these issues that this administrative hearing is to be held.

According to the procedures that have been established, I'd ask Planned Parenthood or their representative to take the podium and identify yourselves and proceed in any way that you find comfortable.

MR. SLOCOMBE: Mr. Devine, Mr. Levinson, Mr. Brooks, my name is Walter Slocombe. I am a member of the law firm of Caplin and Drysdale, Chartered, and I represent Planned Parenthood in connection with this proceeding.

The purpose of this hearing, as agreed with the general counsel and the deputy general counsel of OPM, is a narrow one. It is to address the nine questions which are stated on the issues sheet, which are all of those questions which were identified by Mr. Morris and Mr. Levinson as the concerns of OPM in this connection.

I want to stress that they and not we control that list. After our meeting over here on Friday, we sent over a draft list. Mr. Morris called back with one or two additions, and those additions were made.

It is, however, agreed that this hearing is to address strictly those nine questions, and that that limitation is to apply to the statements of any other parties which are heard as much as it is to Planned Parenthood.

The procedure with respect to questions written on cards was not agreed. I am not objecting to that procedure at this point. But, of course, I reserve the right to object to any departures in that connection or in any other connection from what's been agreed.

The material, the questions which are presented are, we believe, questions which are fully covered in material already available to OPM. We have answered them in some detail because we wish to make it clear that Planned Parenthood fully meets all of the technical objections.

In participating in this hearing and submitting the statement which I will be submitting, we are not waiving any of our objections to a procedure which we still regard as unauthorized under the regulations and improper in a variety of respects, nor are we waiving any right of appeal under OPM procedures. And needless to say, we are not waiving any of our judicial rights.

Because the issues which are to be addressed are relatively technical, having to do with accounting issues, and so on, we have prepared a written statement responding to each point in order, and I will give you copies of that statement now and then proceed to summarize the main points.

I want to begin by saying that these are not general areas; they are specific questions. We have answered the specific question. We would have been glad to answer any other specific question, but we are not prepared to participate in a proceeding which involves an endless addition of frivolous and unsubstantiated charges.

Question one: what agency is applying, Planned Parenthood Federation of America or the affiliates and PPFA combined?

Planned Parenthood Federation of America, Inc., under its trademark, Planned Parenthood-World Population, is the organization which has participated in the CFC each year since 1968.

As I shall be explaining in some detail later on, the bulk of CFC receipts are used for overseas programs which are conducted by PPFA. The question arises because, as with many other American charitable organizations, Planned Parenthood is organized on the basis of a federation, with a national organization, PPFA, and some 190 separately incorporated and largely autonomous affiliates.

Many other American charities, and indeed many other CFC participants, are similarly organized, and indeed the regulations so recognize and contemplate. The regulations are not, however, entirely clear as to whether the technical requirements of the so-called 50 or 20 percent test are to be applied only to national organizations or are to include the affiliates as well.

I am informed that Planned Parenthood has been advised in the past that these computations are to be done on a combined basis. In the case of Planned Parenthood, however, the question is moot, since those tests are met at both levels of Planned Parenthood's organization. I think that disposes of the first question.

The second set of questions has to do with affiliate financial data. In your summary of the questions, you did not accurately state that question, and I shall read it as stated.

It's not a question of why information wasn't submitted, but indeed the first sub-question is why was it submitted. The reason that the affiliate data was submitted is that the regulations require that the financial information to be submitted for purposes of the CFC application "must represent a consolidated statement of national and affiliate income and expenditures," and we have attached to our statement an excerpt from the relevant provision of the regulations.

The next question has to do with why, or more precisely in what sense, is the affiliate data estimated. In order to answer the question, it's necessary to give a little background about how Planned Parenthood affiliates' financial statements are maintained.

All Planned Parenthood affiliates are required as a condition of affiliation to comply with this condition, and they comply with this condition, to maintain their accounts and to publish financial statements which are audited in accordance with generally acceptable accounting principles.

Those principles are set forth in the American Institute of Certified Public Accountants revised industry audit guide and they are substantially the same as the so-called standards which are referred to in the regulations, and we have attached to our statement relevant excerpts from the standards and an affidavit from Kenneth Fischer, a partner of Peat, Marwick, to that effect.

The affiliates are required to submit their reports to PPFA, where they are reviewed for, among other things, inclusion of the proper independent auditor's certificate certifying that they had been so prepared.

It is on the basis of these affiliate numbers that the combined statement required under the regulation is prepared. The figures from the audited reports from the affiliates, if an affiliate has reported at the time the application is files, are used in the CFC statement.

This covers some 80 or 90 percent of the total: that is, 80 or 90 percent of the total affiliate figures are, in fact, taken off of the audited statement from the local affiliates.

There are instances where reports have not yet been received for a variety of reasons, including, for example, the affiliate being on a different fiscal year from the calendar year of the national organization. In those instances, PPFA's financial office obtains figures from the affiliates in order to use them in the statement. Those numbers are subsequently checked against the audited reports when the audited reports are received.

In our experience, there's been no material difference between the totals as submitted in the statement for the CFC application and the totals based on all the audited reports.

In short, then, the affiliate numbers are estimates only in the sense that in a small fraction of the total cases, they are figures which are obtained prior to receipt of the affiliate's audited report. They are not projections or guesses; they are based on a careful compilation of figures from affiliates who, on a current basis, maintain their books in accordance with generally accepted accounting practices.

And given the requirement to present figures covering the affiliates, this procedure is an appropriate and indeed a necessary one. It is indeed the practice of Planned Parenthood to submit for the next preceding year -- that is, for 1981 in the case of the 1983 application -- totals which are based on the audited reports and are not estimates in any sense.

The next question, which is substantially answered by what I've already said, is whether the affiliate data -- why or whether the affiliate data is not audited or certified.

The answer is that all the affiliate numbers are, in the regular course, audited and certified because all of the Planned Parenthood affiliates maintain their books and have them audited and certified by independent accountants in accordance with generally accepted accounting principles.

And I have explained the procedure where, as a matter of necessity in order to prepare a combined financial statement in conformance with the CFC application deadline, in a relatively small number of cases the numbers which are used are based on information received from the affiliates before the filing and submission of their formal audits.

And the final sub-question with respect to affiliate audits is whether or not the audit -- that is, the audit of the affiliates -- is in accordance with accounting standards to satisfy the regulations.

As we have explained, all the affiliates are so audited. The AICPA standards are the standards of the accounting profession and we have submitted information explaining the somewhat intricate relationship between the AICPA rules which are propounded by accountants and the standards which are propounded by a group of associations relating to voluntary health and welfare organizations.

But, in substance, they are intended to be the same; they are intended to produce compatible rules and in most instances they produce exactly the same result. It is the case, of course, that there is not a single auditor, a single individual or accounting firm, which goes through all the books of all the affiliate organizations.

There is no requirement either in accounting practice or in the CFC regulations for charities organized in the way Planned Parenthood is -- that is, with autonomous affiliates and a national headquarters -- to have such a single, unified audit or to maintain a single, integrated set of accounts.

Any such requirement would be immensely expensive and would impact very heavily indeed not only on Planned Parenthood but on many other federated charities operating in the Campaign, notably the United Way.

The accounting practices relating to affiliates, both in general and in specific respect to their submission of information to the CFC, are substantially identical to those which have been adopted by many other charities similarly organized, such as the Leukemia Society, the American Lung Association, the American Diabetes Association and the United Way.

And the questions with respect to affiliates which have been put to Planned Parenthood are equally well directed to those and many other organizations.

Let me summarize this issue of affiliate audits because in various statements a particular effort has been made to create some question as to the accuracy and authenticity of those numbers.

The affiliate data are submitted in accordance with the requirement of CFC regulations. They are based on careful accounting procedures; each affiliate would comply with applicable accounting standards. They are estimates only in the sense that affiliate information comprising a small minority of the total is obtained prior to the submission of the audited annual reports.

Therefore, PPFA's financial data, as submitted related to affiliates, comply with all the requirements of the regulations.

The third question has to do with the so-called 50 percent test. I want to begin by stressing what Mr. Morris made clear he agreed with and what is in any case clear on the face of the regulations.

The 50 percent test related to federal support and the 20 percent test related to public support are alternatives. Furthermore, the relevant year for present purposes under the regulations is 1982, not 1981, which is the year covered in the O'Reilly calculations.

And you, Mr. Devine, as Director of OPM, in fact, last year approved Planned Parenthood for CFC participation after reviewing the very 1981 data which is being questioned.

On the basis of the information submitted, Planned Parenthood clearly meets the test, whether measured alone or including the affiliates. As I said, we believe that the proper test, and we have been so advised by OPM in the past, is to include the affiliates.

If PPFA itself alone, without the affiliates, is included -- a standard which we believe is not proper under the regulations and we believe is not applied to such institutions as United Way of America as independent of its affiliates -- if that approach is taken, we do not dispute that we do not meet the 50 percent standard. PPFA alone, however, does meet the alternative 20 percent test, as explained in detail in the remainder of the statement, and is therefore qualified under the relevant provision of the regulations.

If the focus is what we believe is the correct focus -- that is, the national organization plus its affiliates -- both the 50 percent test and the 20 percent test are met.

Only roughly 32 percent of total support, counting both the national organizations and the affiliates, comes from the federal government. That deals with the 50 percent test. Counting the affiliates, the 20 percent test of public support is also met because public support is 21.95 percent.

As we explain in our statement, Planned Parenthood treatment of the items as federal or other than federal for purpose of the 50 percent test is correct and in accordance with the regulations in respect to each area that has been challenged.

The fourth question is whether the alternative 20 percent test is met. It is clearly evident from the documents before you that the alternative 20 percent test is met at both the national and the national plus affiliate levels.

The national figure is something over 33 percent of public support, and with the affiliates counted, the level, as I've just said, is 21.95 percent. Inclusion of CFC contributions as a form of public support, which is criticized in the Right to Life Committee statement, is clearly in accordance with the regulations.

Indeed, the prescribed format for the source of funds and cost statement -- that is, the financial statement required to be submitted -- explicitly includes federal service campaigns as an element of total support from the public.

Other issues which have been indicated to us relating to what is counted as public support are addressed in the following paragraphs and they show that all criticisms which have been raised with respect to calculations under this test are entirely without foundation.

The first of those questions is question five: is it proper to count in-kind contributions as public support under the 20 percent test? Let me be clear as to the nature of these in-kind items.

The in-kind items which are counted as public support are materials such as medical supplies and office equipment and free or reduced rent for space for use of program activities. All of these items have a readily ascertainable fair market value. Volunteer time is not counted as in-kind support.

By including these items, these in-kind material items, in the total for public support, the affiliates are following the required practice under the standards of the accounting profession. Such inclusion is explicitly required in the standards, and the relevant excerpt is attached on page 22 of the standards, which require that donated materials of this kind be reported as contributions. Indeed, we are advised that not to report them would be improper accounting practice.

In short, in including these items, Planned Parenthood has followed established accounting practices.

The sixth question has to do with the 50 percent test and, if I may say so, it is illustrative of the specious nature of many of the questions which have been raised.

The question is, is it proper to count Medicaid receipts as non-federal support under the 50 percent test? And the short answer to that question is that the reason that they are counted as non-federal support is that is precisely what the regulations require.

The format required by the regulations to be used for the report specifically provides that Medicaid payments must be included in the category of grants from state or local government agencies; i.e., not from the federal government. Planned Parenthood has followed this practice, this requirement, which is, in any event, in accordance with the realities of the Medicaid program and the fact that Medicaid payments received by health care providers are in the nature of third-party payments from a state agency and not federal grants.

The next question takes a somewhat different focus and the question is, is there compliance by Planned Parenthood with the provision of the regulations dealing with deceptive publicity?

Planned Parenthood's general publicity, informational and fund-raising materials accurately describe its programs and its policy concerns. And at this point, I want to address directly a fundamental point.

In those materials, Planned Parenthood makes entirely clear that it supports the right of women to determine whether or when they wish to have children, and that in that connection it supports the right of a woman to choose to have a safe abortion, if that is her decision.

This position is controversial and even distasteful to some people. But it is, in fact, supported by the American public and, in any event, it is a constitutionally protected position. So there is no issue of Planned Parenthood concealing that admittedly controversial position.

The only specific question, the only evidence which we have been asked to answer in this context, charitably reading the material with which we have been provided, relates to the description of Planned Parenthood's activities included in the CFC brochure.

That description reads as follows: "support family planning services in over 100 countries worldwide to those who need it most and use it best; emphasis on Latin America, Africa and Asia."

This is an accurate statement. Sixty-five percent of Planned Parenthood's CFC receipts, net of fund-raising costs, are used for direct support of overseas programs. The balance is used for PPFA's general expenses, and a substantial part of those general expenses represent unreimbursed administrative costs of the overseas program.

Given these facts about how CFC funds are used, the words of the brochure are entirely accurate, if necessarily brief, description.

With respect to the more general question of the overall integrity of Planned Parenthood's literature, it is obviously impossible in the context of this hearing and without specific evidence being raised at all to address every piece of literature that Planned Parenthood has ever put out.

But the best, and indeed, we believe, the overwhelming evidence of the integrity of Planned Parenthood's fund-raising literature is the fact that it has been reviewed and accepted by the two leading recognized independent agencies to certify the fairness and accuracy of charity promotional materials.

These two organizations are the Philanthropic Advisory Service of the Council of Better Business Bureaus and the National Information Bureau. Those organizations do, as their reason for existing, review, among other things, the fund-raising material of a wide variety of American charities, including Planned Parenthood, and Planned Parenthood is recognized as meeting the standards in both of those agencies.

The National Better Business Bureau's Advisory Service standard which Planned Parenthood is recognized as meeting requires that solicitations and informational materials distributed by any means be accurate, truthful and not misleading.

The National Information Bureau's standard, which Planned Parenthood is also listed as meeting, states a requirement that the organizations have ethical publicity and promotion. The recognition by these two established and respected groups reflects and confirms the integrity and accuracy of Planned Parenthood's overall fund-raising effort.

The eighth question is whether interest on loan funds is treated as public support. The short answer to that is no. All interest on loan funds, whether derived from borrowers on loans that have been made or from financial institutions on funds that are available for loan but not yet loaned -- that is, in a sense, the unloaned reserve -- are treated as an element of investment income, and therefore not included in the public support computations but in the other income category.

The ninth question is whether what is shown as public support is properly included under the generally accepted accounting principles or applicable law. For the reasons outlined above, the items which are treated as public support conform to CFC regulations and to accounting standards, and a challenged item -- namely, CFC receipts and in-kind material contributions -- are properly included.

Under nine, there is a sub-question of whether public support includes any contributions which are not tax-deductible because of the purpose for which given. A short answer to that question is that the answer is necessarily no because Planned Parenthood, in the relevant year 1982, did not receive any contributions which were not tax-deductible because of the purpose for which given. And therefore the public support figures or, for that matter, any other figures could not possibly include any such amounts.

I want to answer directly the apparent stimulus for this final question, and that is the charge which has been raised in relation to a 1981 direct mail fund-raising letter. That letter could have been read as soliciting contributions that, once received, would be restricted to use in efforts to defeat certain pending legislation.

The IRS takes the position, which I may say has never been tested in court, that although the expenditures are entirely proper by the charity, gifts so restricted are not tax-deductible.

In order to eliminate any possible question in the future, Planned Parenthood, after the 1981 letter was first questioned, has taken steps to ensure that its fund-raising materials avoid any suggestion that contributions received pursuant to them will be earmarked for purposes of lobbying or, for that matter, any other purpose which would make them non-deductible.

Therefore, there are no such items and they can't be included anywhere in public support; they aren't included in public support and can't be included anywhere else.

These are not very exciting issues. They are accounting issues; they have perfectly straightforward answers. In many instances, one need go no farther than the regulations themselves or the most elementary consultation of the standards and accounting rules to answer them. And they are answers to the entire range of questions which, without any restriction whatsoever, were identified to Planned Parenthood as the so-called technical questions.

The material submitted demonstrates beyond the slightest question that Planned Parenthood fully meets all of the technical standards, and all of the questions raised are utterly without merit.

The issue in this hearing is not whether you like Planned Parenthood or whether other people like Planned Parenthood. The issue is whether federal employees are to have the opportunity, voluntarily, to choose to give their money to Planned Parenthood through the CFC.

The issue is also not any other questions which may be raised. We have answered all the questions raised. We believe they establish clearly that Planned Parenthood is entitled to admission to the 1983 CFC.

And I want to add on the public record that because of Judge Johnson's decision of last week that it is entitled to admission as an international service agency. An exclusion of Planned Parenthood on purported technical grounds would be entirely without legal basis.

That concludes my statement. I will be glad to answer any questions about the subjects addressed, listed, in the so-called issues list.

MR. DEVINE: Okay, thank you. Let me go over a couple of points. On the affiliates, it's your position that you're submitting for both Planned Parenthood Federation of America and its affiliates, is that correct?

MR. SLOCOMBE: That's what the regulations require, don't they?

MR. DEVINE: Are you asking for admission for Planned Parenthood and its affiliates into the campaign or Planned Parenthood Federation of America is the question.

MR. SLOCOMBE: The organization which has participated since 1968 -- the organization which you admit in the case of all these federated organizations is the national headquarters. That is equally true of Planned Parenthood; the United Way of America, which is not the local United Way in every American community -- it's the organization out here in Arlington or Alexandria; the Leukemia Society, and a variety of others.

The answer for Planned Parenthood is the same as for all those organizations. The application is made by the national organization. American charity is often organized in this way. Planned Parenthood is one of those charities. Your regulations contemplate that this will be the case and provide for that case.

MR. DEVINE: I'll come back to the affiliates question there in a minute. I've just been following this and reading it as you're going along, but as I read this, Planned Parenthood has said on the record that its affiliates are not audited under the standards. Is that true?

MR. SLOCOMBE: No, we haven't said anything like that, Mr. Devine. If you'll read the statement, all Planned Parenthood affiliates are audited in accordance with generally accepted accounting principles, which is the only thing that --

MR. DEVINE: The AICA principles, not the standards principles, is that correct?

MR. SLOCOMBE: No. If you'll let me finish, Dr. Devine, I've learned a lot about the mysteries of the relationship between accountants and other people in the last few days.

Accountants will only audit in accordance with AICPA principles because those are the principles by which they are bound. The AICPA principles are, of course, accountant principles. The standards are published by three organizations, voluntary organizations, one of which is the United Way.

In 1974, the AICPA and those three organizations each published revisions of their two documents. One is the so-called industry audit guide -- audits of voluntary health and welfare organizations, published by the AICPA. And the other is the Standards of Accounting and Financial Reporting for Voluntary Health and Welfare Organizations.

I want to call your attention to the material which appears after page 4 in the statement which explains the relationship between those two documents.

The answer that I'm giving you applies equally well to every charity in America, and the statement in the introduction to the standards says, "This revised edition of the standards seeks to attain uniform accounting and financial reporting by all voluntary health and welfare organizations in compliance with the accounting principles promulgated in the 1974 revised industry audit guide, Audits of Voluntary Health and Welfare Organizations of the AICPA."

And then on page 3 of that document, which also appears in the material we've provided to you, in a sense the revised standards and the revised audit guide -- that is, the AICPA document -- are complementary with each publication; each seeks to achieve uniform and responsible accounting and financial reporting.

We've also submitted an affidavit from Mr. Fischer, who is a partner at Peat, Marwick, further addressing the relationship between these two documents.

MR. DEVINE: Your statement on page 3 says that they're substantially the same as the standards.

MR. SLOCOMBE: They are.

MR. DEVINE: Is that taking that out of context or is that what I should be focusing on?

MR. SLOCOMBE: I am not, of course, taking the statement out of context. I invite your --

MR. DEVINE: No. I say am I taking it out of context by quoting that section that says substantially the same as the standards, which would seem to indicate to me that they're not the same, but they are substantially the same? Is that --

MR. SLOCOMBE: They are not, as I understand it, identical. I have not reviewed every line of each document, but they are not, as I understand it, absolutely identical. I want to call your attention, however, to the affidavit of Mr. Fischer which appears at the end of the material you have.

Paragraph two, after reciting the relationship between these two documents, says "Compliance with generally accepted accounting principles will, in most cases, also apply with the standards."

MR. DEVINE: Do you know, Mr. Slocombe, if the in-kind definitions are the same for the standards as they are for the AICA?

MR. SLOCOMBE: They are verbatim the same. Second, I would like to make the point that the intricacies of the relationship between the standards and the AICPA guidelines apply exactly as much to every other organization as to Planned Parenthood.

Accountants are guided by the audit guide and, as I understand it, if there is ever a difference of view, which I have no reason to believe is relevant to any of the questions before you -- if there is ever a difference of view, all accountants will, as a matter of professional responsibility, follow the audit guide and not the standards.

The relevant certification of compliance with the standards has, of course, been submitted with Planned Parenthood's original application.

MR. DEVINE: Do I understand further that some of the affiliates data is based on estimates? Is that correct?

MR. SLOCOMBE: It is based on estimates only in the very limited sense that all of the information for the affiliates is based on the numbers which are maintained by the affiliates.

In about 80 percent or 90 percent of the total, those numbers are derived from audited financial statements prepared by the affiliates, prepared by local accountants, certified for compliance with auditing standards, and then sent into Planned Parenthood's headquarters.

For a variety of reasons, including, for example, that the affiliates are not on a calendar year, in order to meet the deadline for submission of the documents, the relevant audit statement from the local affiliate will not have been received at the time the combined statement has to be prepared.

In that instance -- and it amounts to something like 10 or 20 percent of the total -- Planned Parenthood's staff in New York contacts the local affiliate, obtains the number on an interim basis, and uses those numbers. Those numbers are subsequently checked against the audited reports when they are received.

I'm not able to state of my own knowledge that this is true, but I strongly suspect that for every other organization that is organized on a federated basis like Planned Parenthood is, notably including the United Way, a similar procedure must, of necessity, be followed.

They are not projections; they are not guesses. They are only estimates in the very limited sense that they are interim numbers obtained prior to the submission of the formal audited report.

MR. DEVINE: I notice that you certify the 50 percent and 20 percent in your statement there. I also notice that we have a statement by who I believe is your accountant, Peat, Marwick, in which that issue is not addressed.

Is there some reason why your accountant has not certified to what is essentially an accounting question?

MR. S[illegible]COMBE: The reason -- again, this has to do with the practices for accounting for federated organizations. There is no requirement in accounting practice, and there is no requirement in the CFC regulations, that that combined statement be an audited statement, audited by a single auditor and prepared by a single outside accounting firm.

Accountants, being sensible people, do not certify to the accuracy of numbers that they have not prepared. There is no requirement that a single auditor prepare such a statement, and therefore Peat, Marwick is not in a position to certify ours.

Whoever audits United Way of America is certainly not in a position to certify the accuracy of all of the affiliate numbers for all of the United Way affiliates all over the country.

MR. DEVINE: So, they're not able to certify the affiliate data?

MR. SLOCOMBE: There's no requirement that they certify it. The underlying numbers are prepared in accordance with generally accepted accounting principles, subject to the interim numbers, and the few cases that I've talked about are all individually certified by accountants.

MR. DEVINE: How about the national headquarters data?

MR. SLOCOMBE: The national headquarters data is all certified by Peat, Marwick, and the certification to that effect is included in the original application information.

MR. DEVINE: I mean to speak to the 50 percent and 20 percent requirements which you were asked to certify the veracity of.

MR. SLOCOMBE: Mr. Devine, there is no requirement. If you want to put in a requirement that the sources of funds and cost report be certified by an accountant, you put it in and we will comply with it.

There is no such requirement. I submit to you it is an entirely impractical requirement and it would be objected to by the great majority of federated charities. You put it in, you get everybody else to comply with it; we will comply with it, too.

I entirely reject your insinuation that there is some impropriety in the fact that a number which is not required to be certified by an accountant has been certified. Numbers being certified by an accountant requires, as I presume you know, a detailed examination by the accountant not merely of the procedures used in computing the number -- procedures which Mr. Fischer says are appropriate and reasonable, given the requirement -- but of the underlying numbers.

It is an extraordinarily time consuming and complex process. There is no requirement in accounting practice that it be done. There is no requirement in your regulations that it be done, and I entirely reject the insinuation that there is any inadequacy or impropriety in Planned Parenthood not having it done.

MR. DEVINE: You would object to providing such a certification?

MR. SLOCOMBE: I would object to providing such a certification for Planned Parenthood unless you also require it of every other organization that participates in the CFC which is similarly organized, notably including the United Way.

MR. DEVINE: I notice that in dealing with the statement --

MR. SLOCOMBE: I would certainly object to your at this point adding additional requirements to your own regulations. Excuse me.

MR. DEVINE: I just notice you submitted a statement to them to some other effect which aren't required by the regulations.

MR. SLOCOMBE: I don't think we submitted any statements which are not required either by the regulations or by your questions which, charitably read, relate to requirements that are in the regulations.

MR. DEVINE: You just did submit a statement from someone from Peat, Marwick, didn't you?

MR. SLOCOMBE: Yes.

MR. DEVINE: All right. On page 11, in dealing with the question of deceptive publicity, you quoted a statement that you make in your combined fund appeals that Planned Parenthood supports family planning services in over 100 countries worldwide to those who need it most and use it best: emphasis on Latin America, Africa and Asia -- the ones who need it most and use it best.

"This is an accurate statement," you continue.

"Sixty-five percent of CFC receipts, net of fund-raising costs, are used for direct support of Planned Parenthood Federation overseas programs."

It doesn't seem to me that that meets the question that's in your statement. You say that the people in Latin America, Africa and Asia need it most, and it seems to me that that's the question of where the funds go if the statement is accurate.

MR. SLOCOMBE: Mr. Devine, OPM has been aware of the details of how Planned Parenthood distributes CFC money for years and years. Indeed, you have unsuccessfully litigated an issue turning on that point. None of this is any news to you.

If you don't think 65 percent is appropriate, you promulgate a regulation and put it forward in the proper procedure and we will be happy to comply with it. OPM and you personally have known how these receipts have been distributed.

I believe that 65 percent going for direct overseas programs and the balance for general expenses, a large part of which are appropriately allocated to overseas programs, is entirely consistent with the statement.

MR. DEVINE: That isn't the question, Mr. Slocombe. You're the one -- and let's try to keep out as much invective as we can. As you know, I can play that game too.

MR. SLOCOMBE: Yes, I know.

MR. DEVINE: All right.

MR. SLOCOMBE: And you frequently do.

MR. DEVINE: Do you want to start?

You quoted a statement -- I didn't -- you quoted a statement referring to what -- you promote the statement that you give for the Combined Federal Campaign and it says "support family planning services in over 100 countries worldwide to those who need it most and use it best; emphasis on Latin America, Africa and Asia."

Your response talks about 65 percent of receipts overseas. It seems to me to validate your statement, you should be talking about Latin America, Africa and Asia, which you say need these services most, according to your own --

MR. SLOCOMBE: The overwhelming majority of the two programs involved, International Planned Parenthood Federation and Family Planning-International Assistance, are in Latin America, Africa and Asia.

MR. DEVINE: The overwhelming amount of the 65 percent --

MR. SLOCOMBE: Yes.

MR. DEVINE: -- goes to those who need it most, which is Latin America, Africa and Asia?

MR. SLOCOMBE: They go to Latin America, Africa and Asia, that is correct.

MR. LEVINSON: Through FPIA?

MR. SLOCOMBE: Through both.

MR. LEVINSON: Can you give any breakdown of the two?

MR. SLOCOMBE: Of course, I can give the breakdown. These numbers have been provided in our application materials. I do not have the numbers now because they are not included in the questions which were asked of us to be prepared to respond to on last Friday.

Those numbers, I believe, are included in the application materials. They are, in any event, at least with respect to FPIA, exhaustively reported to AID.

MR. DEVINE: Well, I have some problems about that, too, but let me get to that in a minute.

You say in your final response that Planned Parenthood did not receive public funds which were tax-deductible, with the emphasis on 1982.

MR. SLOCOMBE: We didn't receive funds which were not tax-deductible.

MR. DEVINE: Not tax-deductible.

MR. SLOCOMBE: Because of the purpose for which given in 1982.

MR. DEVINE: In 1981, you said that you did, although you put this side bar comment --

MR. SLOCOMBE: No, I didn't say that, Mr. Devine.

MR. DEVINE: -- that it's never been tested in court.

I'm trying to be fair. You said something along those lines, did you not?

MR. SLOCOMBE: Now, let's relate to what I said, not what I said simply along those lines.

MR. DEVINE: All right. Well, let's hear it.

MR. SLOCOMBE: The statement on page 15 -- the statement has to do with whether or not the public support computations which are relevant to 1983 eligibility, which is the 1982 numbers, include funds which are contributions which are not tax-deductible.

The short answer to that is no. Because of material attached to the stuff that was sent along with your September 1st letter, I understood that the stimulus for this question -- at least I assume that the stimulus for this question related to a 1981 direct mail fund-raising letter.

That letter could have been read as saying that contributions that were received in response to it would be used for the purposes of defeating certain legislation. Activities to defeat that legislation are entirely proper for Planned Parenthood or any other exempt organization.

The IRS takes the position in a revenue rule that gifts so restricted are not tax-deductible. It is, of course, the fact that revenue rulings do not state the law; they state the position of the Internal Revenue Service.

We believe there is a substantial legal argument that contributions received for any proper purpose of any organization which is generally eligible to receive charitable contributions that are deductible are deductible. The IRS takes a different position.

In order to eliminate any possible question in the future, Planned Parenthood, after this 1981 letter was questioned, has taken steps to ensure that its fund-raising materials avoid any suggestion that contributions received pursuant to those materials would be earmarked for purposes of lobbying. That is a straightforward statement of the facts.

MR. DEVINE: And you are referring to a letter on Planned Parenthood Federation of America, Incorporated, with a sub-heading --

MR. SLOCOMBE: It's the letter that --

MR. DEVINE: -- Planned Parenthood-World Population --

MR. SLOCOMBE: It begins "Dear Sinner."

MR. DEVINE: -- with an address of 810 -- I'm trying to identify this for the record, Mr. Slocombe, if you don't mind -- 810 Seventh Avenue, New York, New York, signed by Faye Wattleton, President.

MR. SLOCOMBE: I assume that that is -- that describes a good deal of correspondence that goes out of --

MR. DEVINE: It begins, "Dear Fellow Sinner." Does that recall your --

MR. SLOCOMBE: If that is the letter which is attached to the so-called Right to Life Committee's materials attached to your letter of September 1st, then that is the letter I am referring to.

MR. DEVINE: And that says in its postscript that, "Your contribution in support of Planned Parenthood's efforts to stop the human life amendment is tax-deductible," as being the whole content of that postscript, is that correct?

MR. SLOCOMBE: That's the whole content of the postscript, as I remember it, yes.

MR. DEVINE: Since this 1981 letter, you maintain that Planned Parenthood has now earmarked funds to a special account, or how is this handled for these kinds of solicitations that would be made after your reconsideration of IRS decisions or CFC regulations, or whatever?

MR. SLOCOMBE: CFC regulations have nothing to do with this one. What has to do with this one is the IRS position.

In order to make clear that none of the funds received by Planned Parenthood are earmarked for lobbying, we have taken internal steps to monitor the direct mail fund-raising material to ensure that they do not -- they may refer to Planned Parenthood lobbying activities, and I repeat those lobbying activities are entirely proper and are engaged in by a great many organizations, including the ones you don't classify as advocacy organizations.

The direct mail fund-raising, however, is carefully reviewed to make sure that there is no suggestion that funds raised in response to them will be earmarked for the purpose of lobbying.

Just as the IRS takes the position that gifts which are earmarked for lobbying -- spend this money to pass or defeat, I don't know, the MX appropriation -- the IRS takes the position that those contributions are not tax-deductible. It is equally clear that the IRS takes the position that contributions which are not restricted, even though the organization engages in permitted lobbying under the tax code, those contributions for general purposes are tax-deductible.

Planned Parenthood has taken steps to ensure that we comply with the IRS interpretation of the law.

MR. DEVINE: Is there any earmarking or separate funds or anything like that?

MR. SLOCOMBE: There is no --

MR. DEVINE: You just avoid the problem?

MR. SLOCOMBE: Excuse me?

MR. DEVINE: You just try to avoid the problem, or possible problem?

MR. SLOCOMBE: There is no earmarking of particular contributions for particular lobbying activities. There are some contributions which are earmarked for other particular activities, but not for purposes which would make them, in the

IRS view, non-tax-deductible.

MR. DEVINE: I'd like to refer back to the subject of the first question and to who is applying for the Campaign. What is Planned Parenthood-World Population?

MR. SLOCOMBE: Planned Parenthood-World Population is a trademark of Planned Parenthood Federation of America, Inc. It is the name under which Planned Parenthood Federation of America, Inc., has participated in the CFC since 1968.

MR. DEVINE: It's a trademark of Planned Parenthood Federation of America, Inc.?

MR. SLOCOMBE: Yes.

MR. DEVINE: It is not a particular program? It's the general solicitation name used for Planned Parenthood in all of its solicitations?

MR. SLOCOMBE: No, it is not used in all of its solicitations.

MR. DEVINE: What kind of divides that from other activities of the organization?

MR. SLOCOMBE: I don't understand the --

MR. DEVINE: Is it a trademark for particular purposes?

MR. SLOCOMBE: I don't understand the relevance of that question to this inquiry.

MR. DEVINE: I have a very difficult time understanding all of the affiliates and the sub-groups and segregated accounts, and so forth, that Planned Parenthood, by your own statements, tells me about both in its application and your responses to our letter.

And I think it is important that we understand just who is applying and what that entity is and what kinds of things that entity does. And it seems to me that these are very important questions. We have to know who we're letting into the Campaign, after all.

MR. SLOCOMBE: My first observation is that that is not -- the nature of Planned Parenthood-World Population and the trademark issue, and so on, are not questions which were raised by Mr. Levinson or Mr. Morris' questions for this hearing.

MR. DEVINE: Well, as I relayed my concern to them, I asked them to find out what agency is applying to the Campaign.

MR. SLOCOMBE: And the answer to that question is Planned Parenthood Federation of America, Inc., is the organization which has participated in the CFC each year since 1968.

As I read the regulations, and they are not crystal clear on this point, for any federation charity like Planned Parenthood or like the United Way or like a variety of others -- leukemia and diabetes and a bunch of other diseases --

MR. DEVINE: Well, actually, the regulations use "federation" in a very different way than you use in your title of your organization. But in any event --

MR. SLOCOMBE: But, for example, Section 950.403(c), in stating various requirements, speaks of an organization with constituent parts that exercises close supervision over the operations and fund-raising policies of any local chapters or affiliates.

That, as the statement says, is an accurate description of PPFA's relationship to its affiliates. I understand that "federation" also has a specific meaning for CFC purposes, and that's not, of course, what I'm talking about.

What I'm talking about is the sense in which Planned Parenthood or the United Way or leukemia or diabetes or a variety of others are federations with a national headquarters which sets national standards, conducts a limited number of programs of its own, and serves as a clearinghouse and coordinator and spokesman.

MR. DEVINE: Well, actually, United Way does not fit under that classification for CFC. But in any event --

MR. SLOCOMBE: I'm sorry?

MR. DEVINE: United Way does not fit under that classification.

MR. SLOCOMBE: Well, the United Way is required to submit the same kind of financial information, as I understand it.

MR. DEVINE: But it's a totally different kind of organization.

You mentioned the close supervision thing. You mentioned in some places in that statement that there's close supervision in meeting that requirement of the regs. And yet you also say that they're separate and largely autonomous.

Can you explain to me how something can be under close supervision and be largely autonomous at the same time?

MR. SLOCOMBE: Certainly. As with many other national organizations, Planned Parenthood is organized on a local community basis. The local communities are local organizations composed of local people providing services in their communities.

Their boards are local people. Overwhelmingly, they raise their funds from the local community. In order to use the Planned Parenthood name, they must meet certain conditions of affiliation. Those conditions of affiliation are stated in the bylaws of Planned Parenthood, and those bylaws are attached to the application.

The standards of practice, and so on, which the national organization requires of all its affiliates, the only one of which has been asked about in connection with this hearing has to do with the audit requirements -- the audit requirements is a good example; the organizations are required to be audited.

They are free to pick their own auditor as long as he or she is a CPA.

MR. DEVINE: But you exercise, if I may --

MR. SLOCOMBE: Mr. Devine, at this point I am going to respond that while we would have been glad to describe in detail this relationship, it was not an issue which was identified by Mr. Morris or Mr. Levinson.

Now, I'll listen to the question and I'll try to respond to it, but I believe that you're getting into the area of adding new material, which is the very procedural objection that we made last time.

MR. LEVINSON: Well, certainly, with respect to what is the entity and how it conforms with the regs are certain issues --

MR. SLOCOMBE: The question of what is the entity I have answered about six times.

MR. LEVINSON: -- that were on our list.

MR. SLOCOMBE: The entity which is applying is PPFA, but the --

MR. DEVINE: Well, we understand what your declaration is, but what we're trying to understand is what that means. And you're, of course, perfectly free to refuse to answer any question that you feel is unfair.

MR. SLOCOMBE: No, it's not a question of what I am free to refuse to answer. It is a question of what you and your counsel were free to ask about and give us an appropriate opportunity to prepare.

MR. DEVINE: Well, I told my counsel the main question I'm interested in is who's applying. I have a large confusion of names, of subdivisions, of segregated accounts, of particular programs.

MR. SLOCOMBE: You continue to use --

MR. DEVINE: I want to find out who is in this and the relationship of the affiliates to the national organization. You say that Planned Parenthood Federation of America is the group to be admitted, but you also say that the affiliates should be part of it, where it's not fully clear to me whether they should or they shouldn't.

You mention that they should have close supervision; they're also largely autonomous. I don't understand how they get close supervision if you don't even have copies of their audited statements.

MR. SLOCOMBE: We do have copies of their audited statements, as the statement says.

MR. DEVINE: As they what?

MR. SLOCOMBE: As the statement says, the copies are received, reviewed in the national headquarters, and stored there. They are not all received necessarily for the relevant year on the day that you require the application to be submitted.

MR. DEVINE: And they're not reconciled in any way by Peat, Marwick or anyone else to see whether they --

MR. SLOCOMBE: Because, Mr. Devine, there is no -- look, getting an accountant to do a job like that would be a massively complex and expensive undertaking. In order to get an accountant to certify to the accuracy of numbers, they quite properly insist on going out and not on a comprehensive basis, but at least on a sample basis, looking at the underlying numbers.

There is no such requirement for Planned Parenthood; there is no such requirement for any other organization that is organized in the way that Planned Parenthood, which is very typical of American charities.

I repeat, if you wish to impose that requirement on other organizations on an equal basis, Planned Parenthood will, of course, comply if it is financially feasible to do so. We utterly reject your insinuation, repeated over and over again, that there is something improper about failing to get an accountant's certificate, which is a very technical kind of requirement, where none has been required by you, none has been required by the regulations, and none is required under generally accepted accounting principles, or, for that matter, in any other kind.

MR. DEVINE: Well, that assumes that we're talking about the affiliates in other applications.

MR. SLOCOMBE: The reason the affiliate --

MR. DEVINE: And it already is required for -- close supervision is in the regulations.

MR. SLOCOMBE: The reason that the affiliate data are submitted is that the regulations require those data to be submitted. The numbers for Planned Parenthood are certified by Peat, Marwick, and the certification to that effect is attached to the application, also as required by the regulations.

MR. DEVINE: To go back to my question, what is your answer to my question as to what limits, if any, the trademark, as you define it, of Planned Parenthood-World Population is used for activities relative to the organization which you say is applying, Planned Parenthood Federation of America?

I can understand that you wouldn't know the answer to that, if that's your answer. Is it? To what extent is the trademark co-extensive with the organization?

MR. SLOCOMBE: Because this was not identified as one of the issues which you wanted an answer on, I do not, of course, know of my own knowledge exactly what context the trademark is used in. It is certainly not used in all the activities of PPFA, but it is used in some.

I believe the material is -- well, I'll stand on that answer. And it is precisely for this reason that we sat down and spent most of Friday afternoon with Mr. Morris and Mr. Levinson asking them what questions it was they wanted answered.

MR. DEVINE: I understand, and again, to me, asking what agency is applying is pretty clearly asking what is the name of it, which you yourself gave a name --

MR. SLOCOMBE: Planned Parenthood Federation of America, Inc., is the name of it.

MR. DEVINE: Do you have any knowledge why the term Planned Parenthood-World Population is used for this Campaign?

MR. SLOCOMBE: I don't of my own knowledge. Bear with me a second.

(Pause.)

MR. SLOCOMBE: I would refer you to tab 1 of the application. Without waiving my objection to new matters being raised, the question of the corporate name is addressed in the answer to the first question in the CFC application.

The name which has been used since 1968 -- it goes back to a 1960 organization, an organization called World Population Emergency Campaign which was created in 1960. And the historical background of that name is described in tab 1 of the application.

I repeat that while we would have been perfectly happy to provide detailed information on that or any other matter, we object to the procedure of these technical questions being raised at this point in the proceeding.

This matter has been in the application. If you or your agents thought it was unclear or needed clarification, you've had it since July 5th and we would have been glad to answer questions related to it, and specifically if it had been raised on Friday.

I cannot at this point add anything to what is stated on that page, and I believe it is improper and irregular and a violation of the procedures agreed on to raise the issue any further.

MR. DEVINE: So noted. I will note that it appears, and I have read this statement before, that the terms are co-extensive, but you would prefer to add nothing, or don't feel it's appropriate to add anything to that?

MR. SLOCOMBE: Having exhaustively asked Mr. Morris and Mr. Levinson, who were acting for you, what questions we were supposed to be prepared to answer, I object to the procedure of new questions of a technical nature being raised at this point.

MR. DEVINE: I understand your point, but my position is that these are all questions which are very relevant to the question of what agency is applying.

MR. SLOCOMBE: I have answered the question of what agency is applying.

MR. DEVINE: I don't feel that you did to my satisfaction.

MR. SLOCOMBE: Well, what on earth would satisfy you?

MR. DEVINE: Some explanation of the relationship of the different organizations that are involved with various combinations -- the name Planned Parenthood or Family Planning-International Assistance.

MR. SLOCOMBE: Family Planning-International Assistance is a largely AID-funded program. It is a program of Planned Parenthood. It is also described exhaustively in the materials and a report of many, many pages long was provided to your staff in response to their question about that.

MR. DEVINE: In your response to earlier questions that we asked in this same regard, you said that a majority of the -- I believe you said that a majority of the funds from the Combined Federal Campaign go to Family Planning-International Assistance and International Planned Parenthood Federation.

MR. SLOCOMBE: Yes, I think that's covered in number 7, isn't it? Yes, that is correct. What we said is what it says on page 12.

MR. DEVINE: Am I missing something on page 12? Does it mention Family Planning-International Assistance or the International Planned --

MR. SLOCOMBE: The two PPFA overseas programs in question are Family Planning-International Assistance and International Planned Parenthood Federation.

MR. DEVINE: Therefore, do you have some breakdown between those two?

MR. SLOCOMBE: The breakdown is provided to you in other material. I'll be happy to refer to that. It's in the annual report, among other places. All of this material has been before you now for over two months, detailed, as I say -- hundred-page reports of both FPIA and IPPF were provided to your staff at their request last week on Wednesday, in addition to the material presented with the application.

MR. DEVINE: When you say the application, are you referring to the report labeled "Combined Source of Funds and Cost Report for Planned Parenthood-World Population?"

MR. SLOCOMBE: That is an attachment to the application. The application itself is a document of pages; it fills this whole book. It's quite a stack of papers. It's the document to which that was attached when it was submitted.

VOICE: Three copies were submitted.

MR. LEVINSON: Under which tab would we be looking?

MR. SLOCOMBE: For what?

MR. DEVINE: The breakdown of these two --

MR. LEVINSON: For the breakdown of the two international organizations.

MR. DEVINE: On our summary sheet, it has them together.

MR. SLOCOMBE: I'd like to draw your attention to tab 2 of the application, which includes basically, beginning on page 2 and carrying through for several pages thereafter, a general narrative description of these two organizations.

The publicly-circulated annual report has numbers concerning those two organizations, I believe -- yes. And in addition, I repeat we've provided, without fully understanding its relevance -- we've provided extensive reports on both of those two organizations to you.

I believe it is the case that these numbers are -- there's other information about FPIA and IPPF in other parts of the application, including the audit, I guess.

Find the audit; let's see if we can put our hands on the audit.

MR. DEVINE: Well, I suspect if it is there, it's under a different terminology. The International Planned Parenthood Federation --

MR. SLOCOMBE: No, it is not under a different terminology. Mr. Devine, if you had instructed your counsel to raise these questions, we would have been able to answer them easily.

The material on the nature of those two programs is in the pages of the application to which I referred you. Information on those programs themselves is included in two extensive reports on those two programs which was provided to Dr. Pilon on Wednesday, the 31st of August.

We have made a very full and complete submission on the subject of what FPIA and IPPF are and what Planned Parenthood funding of those two organizations is.

MR. DEVINE: Well, they don't seem to be identified on the financial statement, but maybe I'm missing something. I'll take another look at it, but I don't see it.

MR. SLOCOMBE: I repeat, Mr. Devine, there is no requirement that they be identified on the financial statement. The financial statement follows a format which is prescribed in the regulations. If you want additional information on that financial statement, it seems to me appropriate that you should require it.

MR. DEVINE: Well, we do require that --

MR. SLOCOMBE: Where the money goes and how Planned Parenthood supports those organizations is extensively described in our financial information submitted to you.

MR. DEVINE: We do require that major programs be identified.

MR. SLOCOMBE: And they are extensively identified in the application material.

MR. DEVINE: Well, it doesn't appear to be on the financial statement.

MR. SLOCOMBE. Excuse me.

VOICE: It was submitted in tab 9.

MR. SLOCOMBE: We'll try to identify the relevant pages of the application. I repeat my objection to this extremely technical issue, what particular numbers are and where they appear in the application, being raised entirely without warning at this point in the proceeding.

Maybe we could go on to another subject.

MR. DEVINE: I understand from your representation in your previous letter, again on this question of separations -- as I read your letter, FPIA is a division of Planned Parenthood Federation of America.

You also mention that there is a separate account which elicits funds for abortions. Is that --

MR. SLOCOMBE: Which page are you referring to?

MR. DEVINE: This is your letter to me of August 31.

MR. SLOCOMBE: To Mr. Morris, I think, yes.

MR. DEVINE: To Mr. Morris, yes, on page 2, question 3.

MR. SLOCOMBE: I think it's question -- go ahead.

MR. DEVINE: It says Family Planning-International Assistance is not, as your question implies, a separate organization, but a division of Planned Parenthood Federation of America.

MR. SLOCOMBE: That's right, and that provides the page reference.

MR. DEVINE: Pardon me?

MR. SLOCOMBE: That provides the page reference that we've been looking for, it appears.

MR. DEVINE: Well, now, that's the description; we have that. It's a question of financial breakdown, showing them, the separate funds.

MR. SLOCOMBE: Showing what? Maybe we can cut through this.

MR. DEVINE: Program expenses going to this organization do not appear to --

MR. SLOCOMBE: Paid to FPIA?

MR. DEVINE: Yes, or spent on the --

MR. SLOCOMBE: My understanding, roughly, is that there's about a 50-50 breakdown between FPIA and IPPF. That's not exact.

MR. DEVINE: But you believe it's roughly so?

MR. SLOCOMBE: I think that's right.

MR. DEVINE: My rough look at your statement would suggest that it's probably not that high.

MR. SLOCOMBE: What's not that --

MR. DEVINE: On your statement, you have a line which has payments to affiliated organizations and International Planned Parenthood Federation --

MR. SLOCOMBE: I'm sorry. The bulk of the money that goes to -- you mean the $18,809,000?

MR. DEVINE: Now, if the money that goes to either of those purposes which you have said in two letters and your application and in your statement today goes to one or the other of these programs --

MR. SLOCOMBE: Are you looking at the combined sources of funds and cost report?

MR. DEVINE: On that one, they are lumped together.

MR. SLOCOMBE: Put together, right.

MR. DEVINE: If you look on --

MR. SLOCOMBE: And that has $18,809,000.

MR. DEVINE: Yes, okay.

MR. SLOCOMBE: The bulk of that money is, of course, the AID money for FPIA.

MR. DEVINE: So it is not close to 50-50 of that?

MR. SLOCOMBE: Of the private funds, I think it's roughly 50-50.

MR. DEVINE: Of the private funds.

MR. SLOCOMBE: Again, I totally fail to understand the relevance of this entire line of questioning and I object to these issues being raised at this point when you had an opportunity to raise these questions last Friday.

MR. DEVINE: Well, I think you're doing reasonably well giving us the information without that.

You also identify a separate fund, also, I believe in that same letter; yes, on page 3. A separate fund is maintained by Planned Parenthood Federation of America to provide loans to women who choose to have abortions but cannot pay for them. That fund is financed entirely from contributions separately earmarked by donors for that purpose and no general fund money is used for it.

That is your position?

MR. SLOCOMBE: It's not my position. That's the fact.

MR. DEVINE: Is that fund counted as included in your consolidated report?

MR. SLOCOMBE: Mr. Devine, that is not a question that was raised Friday as one of the issues. I repeatedly asked Mr. Levinson and Mr. Morris if they had anything they wanted to add to the list.

I will try to answer the question, but I object to the procedure. The question is --

MR. DEVINE: Again, I understand your position. My position is that I need this information.

MR. SLOCOMBE: What conceivable relevance -- I believe it is the case that this is a fund which is largely on hand. And since the combined sources of funds and cost report is essentially an income statement, it doesn't appear to any significant degree. It's not a balance sheet; it is an income and expenses statement.

And I do not of my own knowledge know how payments out of that fund are recorded. Any contributions which are received for purposes of going into that fund would, I assume, appear as restricted grants.

Let me state that receiving grants for that purpose is entirely consistent with IRS guidelines as to what is and is not tax-deductible. This is an entirely separate issue from the one we were talking about earlier.

MR. DEVINE: You assume that would show under bequest and restricted grants on the combined sources of funds and cost reports. Is that your statement? Or you said you assume that it would appear as restrictive grants?

MR. SLOCOMBE: Yes, and I repeat that it would be entirely proper to solicit funds for that purpose and to report them as public support.

MR. DEVINE: You believe that's appropriately classified under public support?

MR. SLOCOMBE: Mr. Devine, this is a perfect example of the impropriety of you raising entirely new questions at this stage. Of course --

MR. DEVINE: Was public support one of the questions that we asked you?

MR. SLOCOMBE: The questions which are asked are those listed. I asked Mr. Morris what the specific concerns related to public support were. He raised the question of how interest on loan funds was treated. He raised the question about how CPC funds were treated, and he raised the question of how in-kind materials and other services were treated.

MR. LEVINSON: And he raised those questions as examples of what --

MR. SLOCOMBE: No, he did not raise them as examples. I specifically said we cannot -- we can answer any specific question, but we cannot come prepared to answer -- you know, have you done it all right is not a question that we can provide an answer to.

The specific issues that were raised were raised. With respect to this fund, this is a fund which is used to provide loans for medical services, the right to which is constitutionally protected. There is nothing in any way improper about maintaining such a fund and about receiving contributions for the expressed purpose of supporting such a fund.

There is not the slightest question, I believe, although I am not an accountant and therefore cannot certify to it as an accounting practice, that an amount received for a proper, charitable purpose, even though restricted to a particular purpose, be shown as public support.

Charities go out all the time and raise money for specific programs and specific purposes. I don't believe there can be the slightest question that that is an entirely proper item of public support.

The mere fact that you don't happen to like the purpose for which it is raised has nothing to do with it, or do you think it does?

MR. DEVINE: When you're Director of OPM, then I'll answer your questions.

Just to recount, the majority of Combined Federal Campaign funds go to what you characterize as overseas operations, of which those overseas operations consist of FPIA and IPPF funds, of which the public funds are roughly divided 50 percent between the two, as best as you understand, just summarizing what you've said, is that correct?

MR. SLOCOMBE: Roughly, as long as majority is understood as something substantially in excess of 65 percent, because 65 percent is the direct support for those programs and a good share of the -- at least a significant part of the general activities of PPFA also is properly allocated to those international programs.

So, majority is right, but it doesn't mean 51 percent. It means substantially in excess of 65 percent.

MR. DEVINE: So, 65 percent of the receipts that Planned Parenthood receives from the Combined Federal Campaign are in the nature of transfer payments to other organizations, is that correct?

MR. SLOCOMBE: That will be -- I'm not sure that they're all in the nature of transfer payments. FPIA is not a transfer operation, although neither FPIA nor, as far as I know, IPPF actually maintain clinics in foreign countries.

They, in general, support programs in foreign countries which are maintained by people living in those countries.

As I understand it, they don't run clinics; they provide the clinics -- the description you give will be true of virtually all of the international organizations. Very few American international organizations run the direct interface with the people they're serving. They support organizations in the countries where they operate.

Obviously, there are exceptions, but again I want to make clear that there is nothing improper, and indeed your regulations make clear that payments for the support of direct services at home or overseas are entirely proper as uses of CFC funds.

MR. DEVINE: You also made a representation in your letter that Planned Parenthood Federation of America has no international affiliates.

MR. SLOCOMBE: Now, you're talking about the letter of August 31st --

MR. DEVINE: Yes.

MR. SLOCOMBE: -- not any issue raised in connection with this hearing?

MR. DEVINE: Well, this is related to this hearing for the same reason I said several times.

MR. SLOCOMBE: Well, I think that's a repudiation of our agreement with your counsel as to the subject matter of this hearing, but I will try to answer your question.

PPFA has no international affiliates. Is that the question?

MR. DEVINE: Yes.

MR. SLOCOMBE: That statement was made in response to a request for information on whether any of our international affiliates receive public contributions which are not tax-deductible under Section 170 of the Internal Revenue Code. That's the document you're referring to, question 1?

MR. DEVINE: Yes.

MR. SLOCOMBE: There are, of course, in that sense no international affiliates of PPFA that could receive U.S.-deductible contributions. There are international programs of PPFA which are not overseas organizations separately incorporated that could even potentially receive contributions.

MR. DEVINE: And yet half of the funds that you spend overseas go to this organization.

MR. SLOCOMBE: Mr. Devine, this is another effort to broaden this hearing into entirely irrelevant subject matter. Let me explain once again. PPFA affiliates, Planned Parenthood affiliates, means in the whole discussion in this matter the local organizations; there are 190 of them around the United States.

PPFA, the national organization, also runs, largely funded by AID but also supported with CFC money, a program of

PPFA, not a separately incorporated, separately tax-exempt entity, called Family Planning-International Assistance.

That is not a separate organization. Therefore, you can't make a contribution to it. You make a contribution to PPFA, earmarked for that purpose, if you want to, just as for a variety of other purposes. But it's not a separate organization. In that sense, it is not an international affiliate.

The other international program which PPFA supports is International Planned Parenthood Federation, which is not a U.S. corporation. It is an organization headquartered in London. I assume it's a British corporation -- I don't know -- which has members of some 90-odd national planned parenthood organizations -- the equivalent in countries like Brazil or France or India of PPFA.

Those organizations, those national organizations and their local affiliates are not, except in this extended sense, international affiliates of Planned Parenthood. And in any case, contributions to foreign incorporated organizations are not deductible under the tax code.

The question we were asked was whether contributions to PPFA, the international affiliates, were deductible under the tax code. And the answer is, in the sense everybody has been using the term affiliates, there aren't any, and anyway contributions to any foreign corporation are not U.S. tax deductible for income tax purposes; they are for state tax purposes.

MR. DEVINE: There is one question that is not directly a question our attorneys talked about, but you raised yourself, and a decision I'm going to have to deal with if Planned Parenthood is admitted into the Campaign, and that is the question of the international or national character.

Are you prepared to talk about that?

MR. SLOCOMBE: I think the court has spoken on that subject.

MR. DEVINE: For 1982.

MR. SLOCOMBE: 1982; no relevant fact has changed since 1982.

MR. DEVINE: Well, I appreciate your free legal opinion on that and I'll take it for what it's worth.

MR. SLOCOMBE: I believe that for all the reasons it was improper to reclassify Planned Parenthood from international service agency to national service agency in 1982, with one exception, it is equally improper to do so today.

And the most fundamental reason is that for all the reasons we have been going through in laborious detail here, the CFC funds are used in substantial preponderance, to use your phrase, for overseas programs. The one exception is that, of course, the standard which you promulgated on, I think, August 5th of 1982 is, of course, now publicly known.

And insofar as the issue was the public knowledge, that issue has, of course, changed.

In every other respect -- the vagueness of that standard, the propriety of promulgating it in that way, whether it accurately relates to what Planned Parenthood Federation of America does, whether the standard is equally applied to other organizations -- all of those bases continue to apply.

And we believe that Planned Parenthood, A, is eligible; and, B, is eligible to participate as an international services agency.

MR. DEVINE: The thing that strikes me strange is we have an organization on the income side, at least as I read the numbers, that is predominately domestic, and on the outgo side some majority, according to your statement here which you're trying to recall from memory, which I'm not holding you to, is --

MR. SLOCOMBE: I'm sorry; it's hard to hear you.

MR. DEVINE: Yes. You say that a majority of the funds are spent overseas. The criteria we use for everyone else -- we wouldn't be able to place anybody in the Campaign if we didn't have some criteria in any organization. What we're trying to do is to find out what the nature of the organizations are and to place them by the nature of their organizations. Well, you don't need my comments on this.

Those are all the questions I have. Do you have any, Mr. Levinson?

MR. LEVINSON: Mr. Slocombe, in 1982 there were lobbying expenditures, according to the August 31st letter, of a little over $100,000. Where would I be able to locate that on the combined sources of funds and cost report, or can I locate it?

MR. SLOCOMBE: It is certainly included. This is another of those questions which are easy to answer, given reasonable notice, and essentially impossible to answer without being told that somebody wants an answer.

I am not able to state specifically where that amount is included. If you'll bear with me a minute, I'll see if any of my colleagues know.

MR. LEVINSON: Sure.

(Pause.)

MR. SLOCOMBE: I'm simply not going to be able to answer that question, and I repeat that is precisely the sort of question which you individually and OPM institutionally and Dr. Devine as your client, had an opportunity to ask on Friday. We could have produced an easy answer to it, but not having been asked to answer that question, I cannot at this point produce an answer.

And I think it is an unreasonable question --

MR. LEVINSON: It is fair to say, though --

MR. SLOCOMBE: -- and it is a departure from the procedures agreed on, which were intended precisely to allow us to come prepared to answer that kind of a question.

MR. LEVINSON: Is it fair to say that the figure cannot be located, based on the information provided in the combined sources of funds and cost report?

MR. SLOCOMBE: The combined sources of funds and cost report is required by the regulations to be prepared in accordance with a particular format which appears in the regulations.

MR. LEVINSON: It's not an argumentative question.

MR. SLOCOMBE: I do not think that --

MR. LEVINSON: It's not an argumentative question; it is just a factual question I am asking you.

MR. SLOCOMBE: The answer is that it is included in the total. As to which of the various categories of expenditures it is included in, I do not personally know. The information is readily available and would certainly have been available at this hearing if you had indicated you were interested in the answer to the question.

MR. LEVINSON: All right.

MR. SLOCOMBE: Which you had a complete opportunity to do.

MR. LEVINSON: Are all affiliates not-for-profit incorporated?

MR. SLOCOMBE: They're all not-for-profit; they are all tax-exempt under Section 501(c)(3) of the Internal Revenue Code. I should explain that in some states, there are state organizations which are not for this purpose affiliates and who do not appear on this sheet which are 501(c)(4)'s and not (c)(3)'s.

But all of the organizations which are affiliates which appear on this list which we've been discussing as affiliates and what we mean when we refer to the 190 affiliates are separately incorporated as 503(c)(3) tax-exempt, non-profit organizations.

MR. LEVINSON: And among those affiliates would be the Alan Gutmacher Institute that's listed in the pamphlet on affiliates and chapters?

MR. SLOCOMBE: Look, again, Mr. Levinson, that is a perfect example of the kind of -- I'll try to answer the question.

MR. LEVINSON: Please.

MR. SLOCOMBE: But before I try to answer the question, it is another example of a technical, detailed organizational question that you were free to ask. Its relevance is obscure to me, but you were perfectly free to ask. Now, I'll see if anybody here knows the answer to the question.

I am informed that the Alan Gutmacher Institute is a separately incorporated, tax-exempt organization, a (c)(3).

MR. LEVINSON: So, that would not appear as far as any financial information is concerned --

MR. SLOCOMBE: No. I believe it would appear as an affiliate.

MR. LEVINSON: Would that be incorporated within the funds and cost report?

MR. SLOCOMBE: My understanding is that it is treated as an affiliate for these purposes. In terms of where the money goes, I call your attention to the line in expenditures, research and development, AGI, which stands for Alan Gutmacher Institute, which reports the expenditures, or at least which includes the expenditures.

I don't know that it is exclusively that, but its expenditures are included there.

MR. DEVINE: Just so we're clear on that, the state organizations do not appear on the reports as affiliates and the Albert Gutmacher Institute --

MR. SLOCOMBE: Alan, I think.

MR. LEVINSON: Alan.

MR. DEVINE: -- Alan Gutmacher Institute does show on the statements as an affiliate?

MR. SLOCOMBE: I'd like to know the relevance of that question, but I think the answer is yes. What is the relevance of that question?

MR. DEVINE: It's just very interesting, all these organizations --

MR. LEVINSON: We're the ones who are the questioners today.

MR. SLOCOMBE: No, no, Mr. Levinson. That's a smart answer, but it's not a very helpful answer. We have taken Dr. Devine at his word that he is prepared to try to resolve these technical issues on their merits. We have exhaustively worked over the weekend. We've had people preparing affidavits, answering the particular questions you asked.

We have tried to be flexible and respond to questions which are coming entirely out of left field. Nobody in this process has mentioned the Alan Gutmacher Institute until two minutes ago. If you'll tell me the relevance, I may be able to help you.

MR. DEVINE: Well, what agency is applying is the question.

MR. SLOCOMBE: That, I answered.

MR. DEVINE: Mr. Slocombe, you are intelligent enough to know what is implied by asking that question. I don't believe that you don't know what the thrust of that question is about.

MR. SLOCOMBE: I understand the thrust of the question to be -- are we looking at the numbers headed "National Headquarters" or the numbers -- actually, the numbers headed "Total," which include the national plus the affiliates?

If some other question is intended, I guess I don't meet your standard of being able to divine -- excuse me -- of being able to guess the thrust of your question. I don't for the life of me understand -- to be quite honest, I don't for the life of me understand the relevance of the question about the Alan Gutmacher Institute.

MR. DEVINE: Well, thank you, Mr. Sloçombe. I'd like to have you end your appearance before us today by saying you don't understand. I do appreciate you coming here today.

MR. SLOCOMBE: Well, without waiving any of our objections to this proceeding, we believe that we have established that on any fair reading of any of the technical questions raised, Planned Parenthood clearly meets all of the requirements of the regulations.

We look forward to an early and favorable decision by you.

MR. DEVINE: Could we have some idea of who else intends to testify today?

MR. GLASOW: I'm Richard Glasow, Educational Director of the National Right to Life Committee, and I will open our presentation. There are three other individuals, a total of about a half of an hour. That's not half an hour for each; that's for all four of us.

MR. DEVINE: All right. Let's take a break for five minutes or so.

(Whereupon, a brief recess was taken.)

MR. DEVINE: May we proceed.

MR. GLASOW: Thank you very much. After conferring with other parties, I think we're going to take more time than I originally had given you, but I just wanted to mention that.

I'm the person that's going to introduce our positions. Now, in meetings last week we raised issues of substance and policy that are not being addressed here, and we wanted to point out that it's important that those issues be addressed, and we understand that this particular hearing will address technical issues, and that's what we're concerned about.

And we want to make sure that everyone understands that we are addressing those nine points that Planned Parenthood Federation of American ostensibly addressed earlier this afternoon.

We are going to be addressing the merits of the technical violations. We should point out that the committee voted against Planned Parenthood's application on the basis of that. And these are very -- all of them are complex issues, and they should be tested with representations against specific data. We will present information from five other federal government agencies that show glaring inconsistencies that have to be resolved.

Now, the issues have been raised in the objections.

We are talking about points that were raised last week and in the application or the -- against Planned Parenthood's application both last year and this.

And it boils down to issues of who is applying and does that particular entity meet certain criteria that are specified very clearly in the combined federal campaign regulations.

We'd like to point out, I think, for the record, that it's very interesting that although these are all financial, technical issues, that Planned Parenthood did not see fit to bring an accountant along that could address these issues definitively. I find that to be a glaring omission.

Some of the major issues that we see, recognizing the totality of the entity in an accounting sense, it's part of a worldwide global operation. This is important because federal donors, the millions of federal employees who will be solicited for the combined federal campaign, have a right to know how much of their money is being raised through the CFC, is being put into this program, and how it is being spent.

We stress that the concepts of universal accountability call for full disclosure. That doesn't seem to be the case here. We want total accountability instead of piecemeal accountability, which is what Planned Parenthood is doing.

We feel that there are very serious problems where Planned Parenthood does not meet the 50-20 criteria of the combined federal campaign regulations.

We also point out that they have made misrepresentations as to where the money is going to be going. And there will be other issues delineated as we go forward in our presentation this afternoon.

I'd like to turn the podium over to Mr. Robert Marshall.

MR. MARSHALL: Thank you very much Rich. My name is Robert Marshall. I'm the public relations director for the American Life Lobby. I'm going to attempt, Director Devine, to answer the question: what is the entity? Which has been discussed or not discussed today.

There presently is no incorporated organization named Planned Parenthood-World Population; however, the name does appear on Planned Parenthood Federation of America stationery. The PPWP title derives from a 1961 merger of the Planned Parenthodo Federation of America and a separate corporation entitled World Population Emergency Campaign.

The WPEC had been founded in 1960 by the late Hugh Moore, the famed Dixie Cup magnate, in order to raise funds from American businesses for birth control programs overseas and to assist the International Planned Parenthood Federation in fundraising efforts.

Writer James Michener and Margaret Sanger signed fundraising letters for them while addressing other important groups.

The name Planned Parenthood Federation of America originated January 29, 1942 from a -- from its predecessor organization. They claimed to have been in existence since 1916, but the PPFA name traces to 1942.

According to their own submission to you, in 1982 they had 190 affiliates in 43 states and the District of Columbia. Elsewhere in the document they identify 190 affiliates in 42 states and the District of Columbia. Now, there may be a million research affiliates. I'm now sure. The predominant amount of these, I think 188, are service affiliates.

The Allen Gutmach Institute is a research affiliate; that is, they themselves do not distribute contraceptives or provide for abortion. An affiliate can have one or more clinics as part of its entity nature as an affiliate.

There are in addition chapters which are responsible to the executive board of the affiliate, and I think there are somewhere around 50 of these. There are five regional offices.

The United States is divided into five regions for administrative purposes of the federation.

PPFA member affiliates are required to contribute a portion of their total fundraising income to the New York Planned Parenthood office: that is, the PPFA, not the affiliate in New York.

The rate in 1963 was 12.5 percent and had been so for some time. Affiliates apparently pay a percentage to the regional headquarters as well. The Planned Parenthood Association of the Southern Mountains in Tennessee reported in 1971 in an Office of Economic Opportunity grant request that the national PPWP headquarters got 10 percent of an urged 20 percent, and the southeast regional office of PPWP got 5 percent. I, in addition, was a grant reviewer at the Office of Economic Opportunity during 1973. So I have some personal experience in reviewing federal grants and tracing the sources of money.

Some restrictions apply to funds received by the Planned Parenthood affiliate. In 1948 no affiliate was supposed to receive more than 25 percent of its income from a drug company. By 1961 that restriction was as follows: gifts may be accepted from pharmaceutical firms dealing in contraceptives with the provision that such funds be obtained under terms acceptable to the medical advisory committee and executive committee of the affiliate. I formerly was staff director of a subcommittee chaired by Senator Jeremiah Denton, and I had repeatedly as well as my

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predecessor in that position tried to get information from the Planned Parenthood Federation of America with respect to these certain restrictions, if they still exist, with respect to drug companies.

I was unsuccessful and didn't really receive that much cooperation. Nevertheless, some material was sent.

This monetary relationship with the drug companies, which I assume shows up somewhere in the audit report, is not without its benefit to the drug companies and those interested in curbing the numbers of poor who have children.

The drug companies who have been involved in this have been many: Searle, Upjohn, just to name a few. In 1964 the PPWP annual report stated: eight Planned Parenthood centers were among 41 hospitals and other facilities throughout the world participating in a cooperative statistical study for the evaluation of intrauterine devices undertaken by the Population Council for the evaluation by the National Committee on Maternal Health; coordinating in this unique international enterprise are the experience of nearly 2[illegible],000 users of IUDs who are continuing medical [illegible].

They [illegible] [illegible] involved in clinical investigation. I don't know how this [illegible]. In other words, a woman as a participant in testing of a drug or contraceptive or other device, how this shows up in the audit report; I'm not sure.

Another part of the Planned Parenthood network or organization or entity, as you would like to call it, it was originally founded in 1963. It was named the American Association of Planned Parenthood Physicians. I think it's now the Association of Planned Parenthood Physicians. There is a one line reference to it in the CFC submission. But beyond that I don't see anything.

Proceedings from these meetings are normally published by financial contributions from pharmaceutical [illegible]. Some of the proceedings have been published by [illegible] Company, William S. Merle, Ortho Pharmaceutical Corporation, G. D. Searle, E. R. Squibb, Syntex Laboratories, and Upjohn. They also receive money from the Ford Foundation, Houser Pharmaceuticals, Emco Company, A. J. Robbins, as well.

The other aspect of the service affiliate is kind of like over here. The research affiliate is the Alan Gutmacher Institute, primary research affiliate. It has undergone organizational and name changes. From 1968 to October 1974 this entity or function was known as the Center for Family Planning Program Development and was established as a semi-autonomous technical assistance division of Planned Parenthood-World Population.

From October '74 to October '78 the AGI was the successor -- named as the successor organization for the above center and was named in honor of the late Alan Gutmacher who had died earlier in 1974 and was the federation's president for a number of years.

During this period the AGI was the research and develop division of the PPFA. From October 1977 to the present, the AGI was established as a separate corporate entity, and how it shows up in the report, I don't know, and as a special affiliate of the PPFA.

The Center for Family Planning Program Development, or AGI, which I referred to, has since 1968 been the source of much if not all of what purports to be official federal government policy in the areas of mechanical, chemical contraception, and abortion. This has to do with user need, user services, user rates, alleged need of the poor people, how much money should be spent, how much money is being spent.

During 1969 the Center for Family Planning Program Development was under contract to former President Lyndon Johnson's war on poverty agency, the Office of Economic Opportunity, to determine the need for tax subsidized birth control services.

The center arrived at a figure of 5.3 million poor women between the ages of 15 and 44 in need of federally subsidized birth control. A formula to define the universe of need was developed in 1964 by Steven Polgar, George

Reifus, George Varkey, Oscar Oratti, and approved by Planned Parenthood-World Population social science committee headed by Charles Westcott, Princeton University.

The Planned Parenthood 5.3 million figure was given the stamp of government approval and hundreds of millions of dollars subsequently. The figure even showed up in President Nixon's address on population, noting that 5.3 million poor women were in need of federally subsidized services.

In testimony before the House Interstate and Foreign Commerce Subcommitee, now the Energy and Commerce Committee, Planned Parenthood's Alan Gutmacher stated, "The President in his July 1969 message to Congress stated that there are 5400 women -- 5300 women in this country who require family planning services subsidized."

Dr. Gutmacher failed to indicate the source of of the 50 -- 5,300,000 figure.

After all the debates, the program generated what became Title X. This is the actual product of the work where Commerce Department statistics were used to make estimates of the number of women in certain standard metropolitan statistical areas between the ages of 15 and 44.

The Alan Gutmacher Institute does publications, and which perhaps you have seen. The -- a division of the headquarters of the Planned Parenthood Federation of America is the Family Planning International Assistance.

In 1979 the FPIA was a conduit or agent -- from 1971 for over 40 million in assistance to more than 2100 agencies in 100 countries. Grants primarily came from the U. S. Agency for International Development. And at that time it did not provide services directly, but provided financial and commodity support to local voluntary agencies and non-governments.

In addition, when you get beyond the Planned Parenthood Federation of America, one of the questions which was directed to Mr. Slocombe had to do -- he gave as the following answer: there are two programs of Planned Parenthood Federation of America overseas. He identified these two programs, one as FPIA, or Family Planning International Assistance, and the other as IPPF. So even Mr. Slocombe might have some difficulty in defining what the entity is.

In the front of the CFC application, it said the corporate title -- our headquarters -- we retain the name Planned Parenthood-World Population to state clearly our involvement in the world population problem. The entity, I contend, extends beyond the boundaries of the United States.

Elsewhere in the narrative, they indicate that Planned Parenthood is organized at the national -- is at the local, national, and international levels. It says structured and organized; that is page 1 of 10.

I'm going to read a few highlights to you here on the basic relationship between PPFA and IPPF. This is from a Planned Parenthood-World Population memo dated August 20, 1974. At that time PPFA "is one of the 70-odd affiliated organizations, all private and voluntary family planning organizations which constitute the IPPF."

Point number four: "The U. S. administration for International -- Administration for International Development, AID, has become the largest single supplier of funds to IPPF. This does not mean that the U. S. can call the tune on IPPF strategy. The officers and governing board jealously guard the independence of their policy making role. It does mean a network of special relationships with Washington."

Additionally in point number four: "PPFA, largely through the affiliates" -- this is getting back to the lower part of the entity -- "has been instrumental in creating an atmosphere in this country that would stimulate Congress to vote more than 100 million for family planning to be administered by AID."

That is 1974.

Additionally, the IPPF, which was identified as a program of the PPFA by Mr. Slocombe, states the following -- this is from GAO report in September 14, 1973. It was entitled "U. S. Support of IPPF Needs Better Oversight."

"IPPF officials felt that USGAO procedures were burdensome and infringed upon the independence of a private agency."

"The IPPF maintained also that once AID funds are comingled with other donations, it becomes impossible for the IPPF to separate restricted from nonrestricted funds."

A second quote which I will give you: "Additionally"- now this their own language here -- "the IPPF central committee adopted the following official policy in November of 1940" -- they -- I can provide a citation, if you wish.

"November 1978" -- and I'll give you the audit manual -- Section 4.0.1/11, International Planned Parenthood Federation Policy Compendium Adopted by the Central Committee, November 1978 Dealing with Autonomy and Accountability." That will be a footnote in a book that I hope to publish.

"The federation is accountable for the money it receives regardless of whether it comes from a private purse or from public funds of governments.

"IPPF policies are not distorted by this accountability. The federation protects its own autonomy and independence from donor policies."

So, no matter what may have been said to you by the director of the Agency for International Development, in light of this statement right here, different policies can and have been followed. And in fact AID has used the International Planned Parenthood Federation in areas where AID could not itself go, and this is quoting from a minority dissent to the nomination of Jack Hood Vaughn, August 21, 1970, Senate Foreign Affairs Committee, stated: "In testimony before this committee on April 28, 19 -- April 29, 1980, AID acting assistant administrator for Latin American and Caribbean, two of the areas designated by those most in need by Mr. Slocombe, Edward Corey described a goal of AID policy to be 'to change official attitudes in order to hasten the advent of government supported family planning services.'

"Because of the political sensitivity of efforts to 'change official attitudes', AID must rely on private sector 'intermediaries' such as IPPF to provide population control technology and programs."

In a report -- just to talk about the source of money, which would help you understand what the entity is, Planned Births and the Future of the American Family and the Quality of American Life, put out in June of 1977, 15 members, seven of whom were affiliated with the Planned Parenthood organization in one capacity or another, either at the affiliate level, such as Ms. Sherry Tipper, executive director, Rocky Mountain Planned Parenthood, Fay Wallerton, chairperson, national executive director, Planned Parenthood, Dayton, Ohio -- now you know who she is -- the late Frederick Yaffe, then president of the Alan Gutmacher Institute -- anyway, seven of 15 were from Planned Parenthood.

They indicated "However, the federal government accounted for almost four-fifths of the funds available nationally to support the program in 1974, and there is no evidence that the proportion has changed significantly in subsequent years."

So when you identify or are asked to identify the purposes of the CFC campaign, the source of money, I think it should be kept in mind that 80 percent from these professionals here -- and there's no sign that it's gone down 5 percent each year since 1977 -- was from the federal government.

In addition, I'd like to submit to you a -- I'll read for some of the people here who might not be able to get this -- this is from an April 21, 1975 Medical World News. It's about the former chairman of the board of directors of Planned Parenthood Federation of America, Dr. Joseph Beasley, who was convicted in federal court in Louisiana of defrauding the government. This is Judge Alvin Ruben -- of $778,000 and then conspiring to cover it up. One of the other -- what he did, he charged higher prices for clinics than actually was being paid, took some of the money as the difference, and then shifted to a gentleman who worked -- maybe that's a loose term, "gentleman" -- an individual who worked for the New Orleans Model Cities program.

In addition, there was a question of kind of a shell game being played with money. And I will submit this article to you here. Needless to say that the foundation of which Mr. Beasley was the head of while he was the Planned Parenthood Director -- I'm sorry -- chairman of the board of directors, laundered 200,000 of its federal funds in an elaborate scheme to obtain 1.8 million more federal money under a nine to one matching grant.

It charges that 200,000 in federal grant money from the FHF was given to an Oklahoma computer firm, Software, Inc., which was then transferred, the funds, to a Texas based Shell Corporation called the Fanning Foundation. Fanning, in turn, donated the money to Tulane and Tulane donated it to the state of Louisiana for the use of FHF.

The state used the money to obtain a nine to one matching federal grant and thus turned the money over to FHF. Thus, the foundation had successfully used federal funds to obtain more of the same.

There's more information here about how Dr. Beasley is reported here to have threatened to shoot somebody if he was going to testify against him. I'm sure that's not part of your policy, differing -- perhaps shooting, I would suggest, is not.

He also used some of this money to buy political muscle including former Nixon advisor Harry Dent and former Senator Joe Tydings.

I'm going to submit this to you for your consideratio If you have any questions, I'd be glad to answer them, if that's proper at this time.

MR. DEVINE: What is the answer to your question, what's the entity?

MR. MARSHALL: I've just gone through a narrative, and it -- it's a many headed hydra; money can be shifted around. When I used to review these grants, I would ask questions of the executive directors and individuals affiliated or associated with or on the board of directors of these affiliates, and I would say, well, go to the Illinois Family Planning Council. And I would talk to them and I'd say, well, what's Planned Parenthood and who gets the money.

The best I can do is present you with a narrative and show you the possibilities of what the entity means and how money can be shuffled around. I mean, we all can exchange $10 here and we're no richer, but $40 has been exhanged, but nothing has happened.

I mean, what is the entity? I -- maybe that's why Mr. Slocombe had difficulty answering it. I've been watching this group for 10 years, and I have a little bit of difficulty in describing it. This is the best I can do. It's -- it's an association and the term is loosely used, colloquially -- I know card carrying members of Planned Parenthood that I know of -- people say I support Planned Parenthood, but that means a number of things.

You can give money to an affiliate. You can ask if you're part of their network alert system, which is indistinguishable from a precinct operation -- to, you know, write your member of Congress to -- you're identified by who's a Democrat, who's a Republican and what part of the district you live in, who you vote for, and what you're going to write on.

I mean, so, what does it mean to support Planned Parenthood? How this happens, Dr. Devine, I'm -- I'm not sure. It just is -- there are a number of facets of the organization, any one of which can be identified as a Planned Parenthood function.

MR. DEVINE: Thank you.

MR. MARSHALL: Thank you.

MR. DEVINE: Next.

MR. BOPP: Mr. Devine, I'm Jim Bopp. I'm general counsel for the National Right to Life Committee, and I will direct myself to several of the specific eligibility requirements and application criteria that Planned Parenthood is required to follow and to point out to the -- to you, Mr. Devine, that he -- that they have wholly failed to meet the relevant eligibility require -- criteria.

After me will be an accountant who will discuss specifically the 50-20 and 25 percent requirements.

I think the statements of Planned Parenthood to date regarding what is, we believe, a quite relevant and necessary inquiry concerning their eligibility can best be characterized as deceptive and misleading. It's a shokcing -- I believe -- lack of candor being shown by Planned Parenthood when they are coming here as an applicant who have the burden of proof to show that they meet the eligibility requirements and criteria and who are stonewalling this committee and this agency by a whole series of procedural and lawyer type steps and hurdles, not the least of which is -- is for all practical purposes taking the Fifth Amendment on relative -- relevant and material questions.

I think that their arrogant and threatening posture maybe belie -- maybe demonstrates what is -- what their true concern is, and that is to do whatever is possible and necessary to prevent a relevant, material, and appropriate investigation of whether or not they are eligible.

I think that their financial -- the financial information which they have provided the committee and the answer to that most relevant question, what is the entity which is providing, can be best described as a shell game.

And I think it is -- was best described by the spokesman for Planned Parenthood when asked to answer the question, which is the entity that is applying, he simply said it is moot, which is the entity that is applying.

Well, I would submit, Mr. Devine, that unless an entity which has some substance and character to it and some dimensions which you can understand, that unless they present you with such an entity, they have wholly failed to meet the criteria for which their application can be considered, because without describing accurately and truthfully the entity which is applying -- applying, how can the rest of the eligibility requirements be applied to them?

If they -- if we are to determine whether or not they have 20 percent federal government support, it's obviously an essential precondition to that to knowing what is the entity that is applying, and what then are the sources of funds and expenditures of that entity which is applying?

But Planned Parenthood wants to have it any which way they can so that when one particular eligibility requirement they cannot comply with -- well, that is -- then in that circumstance they say, well, we're the entity that that requirement doesn't apply to. And then when faced with another eligibility requirement which would apply to such an entity, they say well, no, actually, we're this entity over here.

Well, they can't be a different entity for each eligibility requirement. They are one entity which is then to be determined whether or not they -- they -- they qualify.

An example of how critical this determination is will be demonstrated by Mr. O'Reilly who will follow me, and he does a calculation which includes all of the affiliates of Planned Parenthood, including International Planned Parenthood Federation as well as the other affiliates they may be claiming in their application.

And if that entity was included, which received $12 million in AID money, separate and distinct from the some $12 million that Family Planning International Assistance received, that they would wholly and clearly fail, totally in their application and the criteria of 50-20.

So the question is -- and, you know, it is a question for them to describe to you -- and that is: what entity is it? What are their affiliates, not for just this purpose or the purpose of this -- or of one particular eligibility requirement, but what is their entity and what are their affiliates?

You've heard in addition other affiliates of them described as not being included in these figures, that there are (c)(4) organizations, lobbying organizations, that go under the name Planned Parenthood, which they own the exclusive trademark for, such as in Indiana there is an Indiana Planned Parenthood Association on a statewide basis. And using that name certainly demonstrates that they're at least an affiliate, if not a subdivision of this organization, but they are not included here anyway by their own admission.

And then it has obviously a substantial impact on what it is you ought to be supplied when the application is presented, for under the application requirements in the regs, it is required that a copy of the latest annual report be provided, a copy of the latest financial report, prepared in accordance with the standards of accounting, et cetera, and certified by an independent certified public accountant, and finally a copy of the latest external audit by an independent certified public accountant.

Did they provide to you any of these reports, certifications, audits, or any other material regarding any of 100-and-some-90 local affiliates? No. They provided it for the national headquarters because the entity that's applying under that requirements, according to Planned Parenthood, is only the national headquarters. All right?

But then we go on to the financial criteria, and, oh, no, we're not talking about the national headquarters there; now we're talking about the national headquarters plus these local affiliates which we have provided you with our application none of the required financial data or certifications or audited reports or annual reports.

But we want you to consider those funds when we consider that particular criteria.

And I'll remind you, Mr. Devine, that it is Planned Parenthood's burden to present you with a definition and a declaration of their entity, and once they choose whatever that entity is, then to provide you what is required under the regulations.

Now, in addition to the failure of the application to comply with applicable regulations, by not providing the necessary documentation and reports, the financial data which you have been provided clearly does not comply with the regulations unless you're going to allow them to choose the entity depending upon the eligibility criteria that is being considered.

Paragraph three of the eligibility requirements requires that there be an annual audit and certified to be

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in compliance with the standards. And of course we have heard testimony here today that they have not provided to you such material as required by the eligibility requirements. 80 to 90 percent of the -- 10 to 20 percent of the data reflected on the report for affiliates is from unaudited reports. All of that data is based upon a different standard of accounting principles than is the one required under the regulations.

And if they are -- if they so wholly fail to comply with this most basic requirement, how is it that you are then able to look at this financial data and determine whether or not they're eligible and meet the other criteria? For, if under the standards there is one way of showing, for instance, legal expenditures or lobbying expenditures, which Planned Parenthood in its national headquarters has in a considerable amount, well, that can be shown in the program area.

But another standard says that is to be listed in the administrative area; well, then you have two different standards, and you don't know whether or not the same standard has been used to judge everyone. Substantial -- substantial compliance or similarity is not sufficient. For there may be 80 or 90 percent of the standards being the same, and it may be that 10 to 15 to 20 percent that are different that have such a substantial impact on their eligibility criteria that the data is -- is unusable and insufficient to prove their eligibility.

And once again, it is their requirement to prove their eligibility, not for you to prove otherwise.

Secondly, the regulations in paragraph five specify -- and I quote -- "The entity ensures that its publicity and promotion activities are based upon its actual program and operations, are truthful and nondeceptive, and include all material facts."

What assurances have you received from Planned Parenthood that they meet this requirement? For once again what the entity is certainly makes a difference. If the entity is only the headquarters, well, then representatives of the headquarters being here, we would assume that there would be some internal requirements of review so that the material is not misleading, not deceptive, and provides all the material facts.

But if the entity includes all of these other affiliates who are separately incorporated, practically wholly independent, as has been described of them, what assurances do you have that such promotional activity will comply with the requirements?

And this is not an idle question because we have submitted documentation to you about the gross misleading and deceptive nature of their advertising, of their representations to the public. And I have additional information along that line.

First, as we submitted in Exhibit 4 of our written statement, we have submitted several of the -- of the descriptions of Planned Parenthood's activities as provided in the combined federal campaign material. And this has been correctly pointed out by you.

I would comment, though, on one aspect of that which struck me as interesting -- interesting. For the applicant here, as we are reminded so often, was Planned Parenthood Federation of America, Incorporated, and as opposed to what is probably standard practice among charities, that name didn't appear as one -- as the agency which had received eligibility under the combined federal campaign, but another one, a different name used by the same organization, Planned Parenthood-World Population.

I think it's quite plain why they picked that name as opposed to their legal name, the name that we hear repeated so often, to answer and explain the question, what is the entity. And the reason for that is to increase the deceptive impact of this statement on the donor, because it says here, "Planned Parenthood-World Population," adding to the misleading representation that these funds go out of the country to support family planning services across the world.

But we know, of course, that is not true; and the standard is, under the regulations, is there material facts that are omitted. Well, it's -- and we have submitted as Exhibit 5 the -- a copy of the Planned Parenthood Federation of America minutes that indicate where these funds are going to go. And as has been -- as can be determined by reviewing this, these minutes, in fact, 35 percent are used as credits to local organizations throughout the country toward what they would otherwise pay Planned Parenthood Federation of America.

So, when a Planned Parenthood Federation spokesman gets up here and says, oh, well, that 35 percent just goes into our general budget, well, again, he's [illegible] misleading, isn't he, with a lack of candor about the true nature of the facts.

This is a setoff or credit to what a local organization would otherwise have to pay Planned Parenthood Federation of America; more properly and accurately, truthfully described there as money credited to the local organizations, which are credited against what they would otherwise pay Planned Parenthood Federation of America.

And then the -- as has been mentioned earlier, there was a fundraising letter recently signed by Faye Wattleton, which we submitted as our -- as part of our exhibits last year concerning Planned Parenthood's lack of candor, deceptive and misleading practices. And that -- and that letter solicited funds for a $3.6 million emergency fund to finance a massive campaign to alert, inform, and organize the public on this crucial issue, being the issue of the Human Life Amendment, known as the public impact program, and the PS, "Your contribution to support Planned Parenthood's Federation -- Planned Parenthood's efforts to stop the Human Life Amendment is tax deductible."

And then we submitted to you an Internal Revenue Service analysis of that fundraising letter that said quite categorically, not as was deceptively told to you, "This fundraising letter could be read to designate funds for this lobbying campaign," but said quite clearly contributions to it which are earmarked for use in influencing specific legislation are not tax deductible.

Now, Mr. Devine, you inquired of Planned Parenthood spokesmen, well, now, in your -- your combined sources of funds and costs report, in your contributions unrestricted, was any of this money that you're listing as public support, was any of this non-tax deductible because it was raised specifically for this kind of lobbying program and is not tax deductible under the Internal Revenue Code?

And he said no, there are no -- zero -- funds raised in 1982 that we list as public support. And he said the reason is this was a 1981 letter and when there was a complaint about or a question raised about it, we changed it. So that by 1982, as these letters were going out to raise $3.6 million, that none of the funds coming in was the result of such a solicitation.

But you know what he didn't tell you? What he didn't tell you is I am the one that made that complaint. And I made that complaint -- I sent that letter on March 23, 1982, four months into 1982, not in '81, not so that they could change the letter when it was questioned and so that in 1982 all these funds are now clean and now not deceptively raised, no.

I mailed that letter on March 23, 1982. So, again, where is the candor? Where is the accountability? Where is the revealing of relevant financial data by Planned Parenthood spokesmen? No, quite the opposite, quite the contrary: statements intended to mislead the director and ultimately mislead the donor as to what these funds are truly raised for.

And, finally, if you -- you know -- these examples go on and on. But in November 10, 1981 Faye Wattleton signed another letter, signed a number of these letters. And she said in response to an inquiry by the Comptroller General of the United States, the General Accounting Office, she said, "No Planned Parenthood affiliate or clinic promotes abortion with or without public funds," with or without public funds. Without public funds is private funds.

Now, did Faye Wattleton, Planned Parenthood president, did she reveal this motion made on abortion, adopted by the Planned Parenthood Federation -- I'm sorry -- adopted by the membership of Planned Parenthood Federation of America on October 30, 1976?

"Realizing that there continues to exist in this country great geographic areas of unmet need for abortion services, Planned Parenthood Federation and its affiliates recognize as one of their primary responsibilities that the development of high quality abortion services be promoted and encouraged directly through their own medical facilities and through the other competent medical institutions in the community."

And, you know, did she also tell the Comptroller General of the United States when she said that no family planning -- no funds, public or private, were used by Planned Parenthood to promote abortion, that on August 7, 1982, about a year from this misrepresentation, that she sent a letter to Richard J. Leary, who is the International Service Agency, national executive director, concerning Planned Parenthood-World Population position on abortion.

And it says -- and the question was: was CFC funds being used for abortion? And we have attached this also as Exhibit 6 of this year -- of the material we submitted this year.

"Thus, it may be assumed that some of the ISA-CFC funds raised by PPWP indirectly support abortion related activities overseas."

And regarding domestic activities: "Thus, it may be assumed that some of the ISA-CFC funds raised by Planned Parenthood-World Population indirectly support abortion related services in the United States."

So, you know, it's -- it's -- we do one thing for one purpose when we're talking to one -- one party, but then we do quite another thing regarding the same item when we're talking to another party. And, you know, it really doesn't matter, apparently, what is the actual truth, but what will apparently assist Planned Parenthood in getting the federal funds that they are seeking or preventing them from suffering restrictions that they don't agree with.

And what is so different in what they are doing here than what they have done there? And that is [illegible] you know -- changes in the entity, stonewalling the agency, giving misleading representations concerning relevant and material items that are questions concerning their eligibility, and just simply refusing to answer questions regarding their eligibility if it doesn't suit them.

Finally, the paragraph two discusses the 50-20 test, and the 50-20 test, of course, involves the definition of federal funds. And the regulations do not define specifically what are federal funds, but in the 50-20 paragraph refers to them in this way: "50 percent of its revenue from sources other than the federal government."

Now, this raises, of course, a technical, legal question, and that is: what funds are being referred to in that paragraph under the 50-20 test?

Is it funds that come only from a specific federal agency that writes the check and the U. S. government check shows up and that is federal funds? Or does that part of the regulations really and in truth relate to where is the wellspring for the money? Where does the money come from ultimately?

Is it federal government money? Is that from -- the well from which these funds flow even though they might be administered by a state organization?

We would contend that the appropriate interpretation of this regulation would be to include not just Medicare and Medicaid funds, but a whole series of government programs, state administered, that flow from the coffers of the federal government because, after all, the reason behind this test, the public purpose that is being served, is to allow charitable organizations into the combined federal campaign who are not getting substantial support from the federal government already and can seek it then from the federal workers because they need it. They are not feeding at the federal trough in massive amounts, but need the private charitable contributions of individual federal employees.

Thus, we would argue that the appropriate understanding of that requirement, as required by the regulations, would include money flowing from federal government, even though it might be administered by a particular state.

Mr. Mr. O'Reilly who will follow me will analyze the impact for you of that interpretation on the inability of Planned Parenthood to meet that criteria.

I think I would just say simply and finally that this shell game just should not be allowed to go on, a financial shell game, an entity shell game; let's talk about who we're talking about depending upon what you're going to require of us. We want to change that whenever it suits our purposes and allows us to qualify. They're required to tell who they are, what they do, how they spend their money, and from where they receive it. And their refusal, inability, stonewalling procedural tricks, which should hardly be countenanced and should hardly allow them to circumvent, frustrate the will of the President and the will of this agency in ensuring that only true, voluntary charitable agencies which meet the correct criteria are allowed. I'll stand for any questions you might have, Mr. Devine.

MR. DEVINE: Thank you. Yes, I have a couple.

You referred to a letter by Faye Wattleton that Planned Parenthood didn't support abortion and then several instances of where that position was -- you questioned the truth of that statement.

MR. BOPP: I don't have copies of this, but I'll be happy to provide them to you. It's a letter, a letter of Faye Wattleton to the Comptroller General. I believe we have attached the others to our -- the written information we have supplied. But this is the copy of the letter by her to the Comptroller General and then secondly a copy of the resolution adopted by Planned Parenthood membership in direct opposition to what that statement represented.

MR. DEVINE: And then this letter is dated, if I see correctly, November 1981.

MR. BOPP: Yes.

MR. DEVINE: The statement in contradistinction to that you referred to?

MR. BOPP: You see at the bottom on the single sheet that at the top says abortion is a copy of the resolution adopted by the Planned Parenthood membership on October '79 -- '78.

MR. DEVINE: '76.

MR. BOPP: '76.

MR. DEVINE: And then you mention another letter to Richard Leary dated August 7, 1980.

MR. BOPP: Yes. That is Exhibit 6 of the written submission that we made this year concerning Planned Parenthood's eligibility.

Could we substitute a clearer copy for the November 1981 letter to the Comptroller General?

MR. LEVINSON: If you could make available a copy after the meeting to Planned Parenthood's counsel.

MR. BOPP: We will.

MR. LEVINSON: Thank you.

MR. BOPP: Finally, I did make reference to another letter which I do not have with me, and that is a letter to the postal inspector dated March 23, 1982 complaining about the deceptive fundraising letter by Faye Wattleton, which -- and apparently from not only testimony here but from communications with the Postal Service, resulted in Planned Parenthood changing that letter, but well into 1982.

MR. DEVINE: This is the letter you referred to that you wrote?

MR. BOPP: Yes, that I wrote. But I'll be happy to provide that to you.

MR. DEVINE: I wish you would get that to me as soon as possible.

MR. BOPP: It's in my office in Indiana, and we'll have it off to you as soon as I can.

MR. DEVINE: The other item you referred to is a letter from the Internal Revenue Service. Are you referring to a letter you submitted as Exhibit 9 to Appendix B of your report addressed to the Honorable M. Caldwell Butler?

MR. BOPP: Yes, November 17, 1981.

MR. DEVINE: Would you tell me precisely what part of that letter you're referring to?

MR. BOPP: Turn to page 2 and the next to the last paragraph, the last sentence in that paragraph. They were specifically analyzing that Faye Wattleton letter that was attached as an exhibit just before; it must be number 8.

That specific letter was submitted to the IRS by Congressman Butler for analysis, and this was then the response to that submission.

MR. DEVINE: And subsequent to this, you wrote your letter to Planned Parenthood or the postal -- who was this?

MR. BOPP: It was written to the U.S. Postal Service, the Office of the Inspector General, complaining that under applicable federal law that this fund-raising letter constituted a deceptive attempt to obtain funds by misrepresenting to the donor some material facts.

And that allows an administrative remedy by the

Postal Service, and that is confiscation of the returns of the letter in order to safeguard the contributor's intent and to prevent an organization from profiteering by misrepresentations through the mail.

The response that I eventually received, which I would also be happy to provide you -- I eventually received was that Planned Parenthood had changed the letter, and so they were satisfied with that administratively and they would not pursue it further, which is, again, further support that this occurred way into '82 and, you know, during a period of time in which there were literally millions of these letters going out on a regular basis.

If you know about the way you raise funds for prospecting purposes -- in other words, these were not letters to members, people who were already donors, but they were primarily letters for what we call prospect mailing.

You expect maybe a $15 return, and of the list that you would mail you would expect maybe a 1 to 1.5 percent response. So, in order to raise $3.6 million, they'd have to send out millions and millions and millions of letters, and that was the campaign that they were involved with and this letter was the one that they were using, you know, well into 1982.

MR. DEVINE: The copy I have of the letter to Richard Leary seems to be broken in the middle. Do you have a complete copy of that? Would you try to find one?

MR. BOPP: Yes, we will try to.

MR. DEVINE: Submit it with the rest of the material.

Will you explain to me again the significance of the item that you quote from minutes of Planned Parenthood Federation that deals with the 35 percent, or if I've characterized that incorrectly, tell me how it should be characterized?

MR. BOPP: That minute, which is exhibit number 5 of our submission for this year, is an excerpt from the Planned Parenthood 1983 CFC application, so we obtained this from examination of the current CFC application of Planned Parenthood.

It's a copy of the board of director minutes which describes the method by which and where the CFC funds to be raised are to be spent. And as you can see, there is a substantial, material fact which raises up in examining where these funds go, and that is specifically that they are credited to local organizations rather than --

MR. DEVINE: Would you read it for me? I have a bad copy here.

MR. BOPP: In the middle, it says, "Combined Federal Campaign international service agencies," which is blocked in, and paragraph two says "Thirty-five percent of the net received from the CFC ISA will be allocated for Planned

Parenthood Federation of America general, unrestricted support. From this amount, affiliate rebates will be drawn as described by the fair share plan."

In other words, these are funds that are being segregated for local affiliates; not for international programs, but for local affiliates, according to the fair share plan. And I think Mr. Glasow can describe to you a little more detail the fair share plan.

MR. DEVINE: But let me finish. Thirty-five percent would not be in disagreement with the 65 percent that they're claiming goes overseas, would it, or is it?

MR. BOPP: I understand your question.

MR. DEVINE: If I remember correctly -- and I'll have to look at the record to refresh myself, but it seemed to me Planned Parenthood today, through Mr. Slocombe, represented that 65 percent of the CFC money went overseas. And if they're only talking about 35, 65 and 35 seems to be 100; it doesn't seem to me to be in any necessary contradiction to their statement. Is there something I'm missing?

MR. BOPP: Well, not essentially, except for the conclusion. The paragraph one indicates that 35 percent goes to the IPPF, which has been described, and paragraph three indicates 30 percent goes to the FPIA.

Well, the regulations require -- and this is where I would -- and that totals up to 65 percent. Where I would disagree with what I believe you said was whether or not this constitutes a violation of the regulations. And I would submit that the regulations require that the entity ensures that its publicity and promotional activity are based upon its actual program and operations, are truthful and non-deceptive, and include all material facts.

And I would submit that the fact that 35 percent of this money is going to domestic Planned Parenthood operations, credited to local affiliates, is the omission of a material fact in their CFC promotional activities.

They are saying in the submission which is exhibit 4 to our 1983 material -- they are saying Planned Parenthood World Federation supports family planning services in 100 countries worldwide; emphasis on Latin America, Africa and Asia.

Well, when 35 percent off the top is credited in this way, that's a material fact and, I believe, a misrepresentation.

We have the rest of Leary's letter here which Mr. Glasow can explain to you if you wish.

MR. GLASOW: This is out of the files of OPM. It is filed with the fall 1980 application from the Planned Parenthood Federation of America. It's in your regional director's files and there's a big sheath of about three or four inches' worth of stuff. And if you pour through that, apparently what you have -- it's listed with the fall 1982 --

MR. DEVINE: I have already directed him to get that. We can get the original on that. I was just asking for clarification here; that's all.

I don't have any other questions. Do you?

MR. LEVINSON: No, I have no further questions.

MR. BOPP: Thank you.

MR. DEVINE: Perhaps before the next speaker comes, Mr. Slocombe apparently has a point. Do you want to --

MR. LEVINSON: Mr. Slocombe, did you have a -- thank you, Mr. Bopp.

MR. DEVINE: Thank you.

MR. SLOCOMBE: I would like to respond on that particular point, but since we're done with that point, I'll wait.

MR. O'REILLY: Dr. Devine, Mr. Brooks, Mr. Levinson, my name is William O'Reilly. I am a certified public accountant. I have been in public accounting practice for 21 years. Before that, I served in the Kennedy administration as assistant comptroller of the U.S. Postal Service.

After leaving government in 1962 or '63, I served on an interagency committee which dealt with many of the issues in the sense that we're dealing with today. So I want to offer a historical perspective on four points: the entity concept, in-kind, and 50 and 20.

These are issues which are not all new, and since I had an opportunity back some 18 years ago to write the first booklet which provided how to do in-kind accounting -- and the reason for it at that time -- as you recall, in the Great Society program, we had a lot of matching programs that hit for the first time.

So, as I go through this offering the development of the theory and practice behind these requirements, I think it might take a little time, but I think this perspective is necessary because we've been hit with an awful lot of confusion over how in the world to apply certain rather rigid, precise and objective criteria.

MR. DEVINE: Let me interrupt for a moment. I notice it is quarter of six, and I have an engagement at about five after six. You intend to talk for a while, and is there anyone else that intends to speak?

(One hand was raised.)

MR. LEVINSON: Let me further add my concern, Mr. Director, that we are approaching very soon the beginning of the Jewish new year, and with that approaching, it would be helpful to end the meeting as soon as possible.

MR. O'REILLY: May I suggest that I offer a summary?

MR. DEVINE: Well, I'll say I will stay here about five more minutes. If we can finish by then, that's fine. If not, I would post the hearing until tomorrow or, maybe with the holiday, Friday; I don't know.

MR. O'REILLY: Dr. Devine, I think in fairness to you and the others, I have been with this issue for some 18 years. There were definite misstatements by Mr. Slocombe on generally accepted accounting principles which I really have to correct.

These are very significant points and I don't think the record should go uncorrected in terms of in-kind being part of generally accepted accounting principles. But, in summary, what I'm saying is that the ultimate test of accounting theory is empirical.

I have spent a good part of the last several years working on an international basis to try to bring some of the professional societies together as part of the International Federation of Accountants and other groups.

So, the concept of wrestling with different views and different perspectives is always against the background of its empirical benefit. The ultimate test is to you. We are adopting rules which basically meet the test of usefulness. There's nothing written in stone here.

And for 18 years, the government has now come to the point where generally accepted accounting principles, up until the early '70s, were actually being used in government agencies and it's only in the last decade that we've come on very strongly in recognizing that we have to have books.

I taught the first course in one of the local universities where government accounting was introduced back in the late '60s, so this is relatively new against a profession that's been doing this for 90 years.

Now, several years ago Elmer Staats -- for the last three years that he was Comptroller General, he organized a staff which worked on what is the entity concept, because you're dealing with the framework; you're dealing with a fundamental concept. And I think the testimony today and the confusion of the past week illustrates more clearly than anything that I have seen that you should listen to this.

And I think the participants in this hearing should listen to this because this is based upon the contribution of Elmer Staats, a committee that he organized, and I think criteria which is right on the mark.

Now, I'll move down to what they're finally coming to or recommending; this is dated October '81. I'll provide you with a copy of it. The entity is -- traditionally, we know it's an organization, a corporation, a partnership, a sole proprietorship.

Accountants talk about a separation and a segregation of funds for a specific purpose. I think the Peat, Marwick audited statements are a good illustration of that -- the PPFA statements which show segregation of various funds for different purposes.

We have moved way beyond that. The entity is a concept which is used to manage resources. This is basically what has evolved very much even in this administration to try to get a handle on hundreds and hundreds of segregated categories of grants and programs.

I have identified numerous sources of funding. We've been in five agencies; we've done a lot of research. I have the reports from the Department of Health and Human Services for these organizations. We have reports from the General Accounting Office.

We found out there's CETA money involved in some of the Planned Parenthood organizations. Now, what I want to do is offer in testimony these reports so that you can see the question which we're raising is a very fundamental question. What is the source of the money?

And then I also would like to just give you a summary which identifies over $100 million of government funds. And I think it's fair to you to say you look at a statement that shows a category of 100 million, 18 million overseas -- what is the 18 million being used for?

The entity that I have constructed here is in accordance with these guidelines from the Comptroller General, which says that the primary purpose is utilitarian. And the utility here is that you as the person responsible for making a decision on an aggregate program should know what the parameters of that program are, and I have outlined them in this exhibit and let me just take you through it.

MR. DEVINE: Well, Mr. O'Reilly, I can already see I'm not going to be able to handle this in five minutes.

MR. SLOCOMBE: Could we have a copy of the documents that are being referred to?

MR. LEVINSON: Yes. I would --

MR. DEVINE: Mr. O'Reilly, would you do that, please?

MR. LEVINSON: Let me state for the record both with respect to these materials and anything Mr. Bopp might be submitting -- anything new, copies should be directed, should be sent, to Planned Parenthood's counsel, Walter Slocombe.

MR. DEVINE: Has the Planned Parenthood statement been made -- the other way, too, I suppose should be done.

MR. LEVINSON: Have you received -- well, a copy of that statement should be made available to Mr. Bopp.

MR. SLOCOMBE: Mr. Devine, the whole point of the meeting on Friday was in order that we should be able to respond to a known set of questions. What Mr. O'Reilly says is interesting.

I am a tax lawyer. I understand that there's a lot of things that need to be improved about accounting. But if we have not agreed and we have not been informed of any of this material before, we will try to proceed in good faith. But I object very strongly to massive new documentation being brought forward at this stage.

We were provided with a 45-page statement from the very organization that is now testifying. We're familiar with that material, but whole masses of new documentation -- and I can see that it is massive -- are being provided. I think that is irregular and it is not consistent with the procedural agreements which have been worked out.

It is not a technicality to insist on fair notice and to insist that a hearing be confined to the issues of which notice was given.

MR. O'REILLY: Dr. Devine, I --

MR. DEVINE: I understand -- Mr. O'Reilly, please -- I understand your position, Mr. Slocombe. On the other hand, while we may have had some differences as to whether you think my questions were within the realm of our questions -- I think they were -- but I think you raise a question about new information being raised.

On the other hand, it has been raised and I have to make a decision, and I'm going to make the decision based not only on the information that we agreed should be provided by you, but also the information provided by the others.

As I quickly look through this, it certainly seems to be dealing with those questions that we raised. Again, we might have some disagreement as to exactly what that means, but I think it's clearly within the general guidelines.

And I've now gone ten minutes on my five-minute promise, and unfortunately the media rules the world and I have to be on the Buchanan and Braden show in about five minutes.

So, I'm going to recess this meeting at this stage and continue with Mr. O'Reilly and the other gentleman -- would you please leave your name here so we can know who that is -- and then hear from that gentleman. And then Mr. Slocombe has asked to make a statement in response to one point. I'll be happy to do that.

I do know the concern of all involved to have an expeditious decision, but unfortunately both my counsel and my deputy counsel will not be in tomorrow and I have not discussed with them how we can proceed to a meeting. I would like to set a time certain now.

Mr. Slocombe, would you consider Friday a reasonable time or do you think it's incumbent that we do this tomorrow?

MR. SLOCOMBE: Well, I have no desire to inconvenience anyone for whom tomorrow is a holiday. I don't think that the continuation of this proceeding is reasonable under the circumstances. But as between Thursday and Friday, I have no objection to proceeding.

In light of the fact that tomorrow is Rosh Hashana, I have no objection to proceeding on Friday. I am very concerned that the clock is running; local decisions are being made.

Any decision, one way or another, on Planned Parenthood has now been delayed really a week longer than any other organization. I would like to request that you have heard -- you've heard our position; you've gotten the gist of the Right to Life position. Their documentation has been submitted.

I would like to request that you consider reaching a decision on the record as it now stands. I think that is procedurally fairer to everybody and better accommodates the needs of the Campaign.

However, as between Thursday and Friday, if you insist on continuing the hearing, Friday is acceptable.

MR. DEVINE: Thank you. I don't feel that I can continue without the additional information. I have consulted my schedule and the earliest that I can have the meeting on Friday would be 1:00 p.m., so we'll recess until 1:00 p.m. Friday. Thank you.

(Whereupon, at 5:58 p.m., the hearing was adjourned.)

APPENDIX 9

OFFICE OF PERSONNEL MANAGEMENT

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A PUBLIC HEARING ON:

Inclusion of

Planned Parenthood Federation of America, Inc.

In The Combined Federal Campaign

- - -

Friday, September 9, 1983

1:20 p.m.

Auditorium, 1900 E Street, N.W.

Washington, D.C.

- - -

BEFORE:

DONALD J. DEVINE, Director, Office of Personnel Management

STAFF PRESENT:

RONALD E. BROOKS, Assistant to the Deputy Director
DANIEL R. LEVINSON, ESQ., General Counsel

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PROCEEDINGS

DR. DEVINE: This is the third administrative hearing session dealing with the application of Planned Parenthood to join the combined Federal campaign. At the last meeting, we were in the midst of hearing testimony from Mr. William O'Reilly.

Mr. O'Reilly, are you here?

MR. O'REILLY: Dr. Devine, Mr. Levinson and Mr. Brooks: I have given you a one-page outline of what I will now cover. As I mentioned there are four points, the same four points that I mentioned earlier in the week.

First, what is the entity? Secondly, is in-kind public support allowable. Thirdly, the application of the 50 percent test. And fourthly, the application of the 20 percent test.

In just going through this outline to sort of scope the presentation, let me just read what I state as the entity, as I will develop in my presentation.

The entity concept applied to the CFC funded program should include the organization and program components necessary to evaluate the total resources provided by the American public and the application of those resources. In my discussion I will develop that from the point of view of the development of accounting theory and practice over the past fifteen years. It doesn't take long, but I think we have to look at this as something which is dynamic, which is changeable, which is evolving and brings us from the past practices which have been reevaluated and modified to the current concepts, the current interpretations in this area.

I want to cite two sources. I want to conclude on the fact that the major concern here really is resource allocation and resource management. It's a decision-making application of the entity concept, and that is really what is most relevant.

Secondly, the question under in-kind, you have been presented with a financial statement containing unaudited, estimated and, I believe, even averages of close to $5 million of resources. And there are very serious questions concerning the allowability of that amount. And again I have to go back because this is something that has changed considerably and it has been quite controversial in the accounting community with the rule-making bodies. So I want to just take you through briefly the theory in practice that has evolved as the rational foundation.

I think the thrust of my presentation is to give you the rational foundation for the position, for the basic conclusion which we draw in defining the entity and stating that the allowability of in-kind depends on various criteria.

The 50/20 test is really the result of looking at the resources which are being measured. So I want to cite the ten different Federal sources of revenue which go into some of these programs and again highlight the fact that a decision can only be made by looking at a total picture and avoiding the fragmertation. There has to be an aggregation so that the decision can be made on a basis of what is it that is being applied to this program and how it is being used.

First of all, under the entity concept conventional accounting has recognized certainly for a number of generations that an organization is an entity. That's what most of us are familiar with, whether it's a partnership, a sole proprietorship or a corporation. That is without question, I think, the consensus and the universal understanding of a business entity. In the field of government,the government is an entity.

The development of the accounting art and science -- and I think it's important and it's part of the complexity of the issues facing us that accounting is an art and a science. Even in this discussion where I run the gamut of theory and practice, we will run to the edges of science. You get to the final point where it's not exact, that not everything can be reduced to absolutes. There is an element of judgment which has not been resolved and, based upon the evidence and the facts, you are going to have to recognize that this exists to some degree in this situation.

The more recent developments which I cite, first of all, by the General Accounting Office, but there are numerous other groups -- in 1973 we had the True Blood Committee of the American Institute of Certified Public Accountants. More recently, there have been municipal finance officer organizations, but we have come to realize that the challenge in terms of managing resources is much more related to the things that are being done, in terms of making decisions of what should be done and what shouldn't be done. You look at outputs; you look at what is it that you are getting for your dollars. And this has been, you know, very much recognized in the concepts of United States government budgeting, where you package resources according to things to be done.

And this is carrying over now into the way entities and project management groups are defining it. I taught project management to representatives from about thirty-five countries from 1975 to 1978 under contracts with USAID. And in one of my sources I cited the other day the text that was used in that material, which is the book that is by Professor Bernstein. I just will mention the title of it because I think this is based upon our search to try to find the best information of how we can define what management entities are. And we used the text, The Financial Statement Analysis, Theory, Application and Interpretation by Leopold Bernstein.

And we used that to recognize that his focus is managerial. It's moving more away from private sector commercial applications towards what we really have as a need in managing aid programs. We deal in projects. We deal in groupings and categories and components and elements.

And the way these are assembled is called the program entity. And I think what is relevant here is that what is simply called for is an aggregate financial presentation of the sources and the application of funds. Our generally accepted accounting principles, which I don't think are at all in dispute, have as themselves the rule that you're not in conformity with generally accepted accounting principles unless you provide breakdowns of data so that you can answer the most obvious questions.

For example, I would question whether or not that summary statement that was referred to earlier in the week, this exhibit which shows a statement prepared by Planned Parenthood World Population, showing $200 million of revenue and $197 million of expenditures. And in there is one category for $122 million.

That basically is where you run into problems with generally accepted accounting principles. It would normally require a breakdown. What was done with that $122 million? What was done with that $18 million? And this is where we get into the principle of disclosure and accountability.

I think it's a reasonable requirement to spell out in sufficient detail in the financial presentation

DR. DEVINE: Would you identify that statement you are referring to? Is that the combined sources of funds and cost report?

MR. O'REILLY: Yes, paren (including national headquarters and affiliates for the year ending December 31st, 1982).

DR. DEVINE: Thank you.

MR. O'REILLY: The first column presents audited information; the second column presents estimated information. And I am just making the point here that normally there is a requirement to provide sufficient information for decision-making purposes. The fact that there are substantial sums of revenue not included in this presentation but which do relate to the program is relevant. It was mentioned in earlier testimony that 65 percent of the CFC contributions are used in international programs. And yet, as I indicated in my first exhibit on page 3, the entity that I would imagine you would look at if you were to try to make judgments in terms of what is the size, scope and shape of this program that is getting two-thirds of the money, you would certainly find it relevant to know that there are three contracts which are not included in that combined source of funds and cost reports.

And the reason it is not included, I am safe to say, is that the focus in the combined source of funds and cost report is organizational. I think that was made very clear the other day, that it's an organizational perspective which doesn't include actually what is happening with the money. It's obviously the Planned Parenthood Federation of America in column number one and some 180 or 190, whatever it is, affiliates in column number two.

Now I'm coming along and saying that the recipients of these monies are more international which would be -- raise the question: Why isn't the $12,590,000 included in that entity? So I do come back to say that the basic focus is program management purposes.

What we do in accounting today under generally acceptable financial presentations is to sometimes include supplementary information. This is not necessarily a compromise, but it's a transitional thing when you are trying to go from, for example, historical cost accounting statements which the American accounting profession has been very rigid on, the most rigid of all the international accounting societies that I have worked with, but whereas other nations are more concerned with replacement values and current values.

We adopt these as supplementary disclosures. The fundamental requirement to you, as Director making decisions, is that they respect the principle of full disclosure. And I don't think this necessarily has to be reduced that the accountants are given only one choice, namely that they must construct an entity as I would define it.

But I suspect that it would be the consensus in the accounting community that, if you ask specifically for this format to be filled out and there is obviously a need'-- and I think it's recognized that we are in search of trying to get some composite picture of what PPWP is all about -- and that composite picture requires maybe supplementary information as a minimum, which would be based upon what I have included as the schedule on page 3, something that shows the taxpayers of America are putting in over $100 million into this program.

And I think it just goes without saying that a program of that magnitude and that materiality requires full disclosure as to its size and to how that money is being spent.

The thrust of the GAO Committee was to try to bring this approach much more into the Federal agencies and the Federally-funded programs. During the last fifteen years we have seen such a fragmentation through, you know, hundreds of categorical aid programs, and even within agencies where it's extremely difficult to really understand all the different programs, you look for the logical arrangement. And we have had one program after another, from zero-based budgeting on up. Budget packaging is another phrase, which I am sure you are familiar with and I'm sure you've had to do it in your agency.

Why wouldn't we in the private sector do the same thing? We call it segment information in corporations. You break down a corporation into segments of what they do because many of our corporations today may be called the X,Y,Z Railroad, but, you know, they can own hotel chains and do all sorts of things.

So we find that the segmentation is not a substitute for the basic balance sheet and the income statement, but the purpose of it is to provide disclosure to investors, to lenders, to the public at large.

And I sort of see you in the same position, at a tremendous disadvantage trying to make a decision on a program of over $100 million and yet over $12 million is excluded from that presentation. I think the requirement now or later should certainly be for supplementary data, if not as a substitute for the present information, as an appendage to it, which gives you the total picture.

Now under Secretary Schweiker earlier we had some reason, or I had some reason to try to collect information on some of these Federal programs, and they were going into block grants and there was a lot of shifting to the states. And an analysis was done on just one of the programs, which is called Family Planning, and the reason I picked it out is because I think it's so directly relevant to the programmatic aspects of what Planned Parenthood is doing and participating in from a dollars and cents point of view.

And I'm just going to go down -- this is a little bit stale; it's 1981 but I don't think things have changed too much in terms of funding patterns. The block grant has not gone through. But taken off the reports given by Planned Parenthood and others who participated in that program, I prepared a schedule to just tell me how much money we are talking about, which is $483 million, and where is it coming from.

MR. BROOKS: Has that schedule been made available to us?

MR. O'REILLY: No. I have it; I could make copies of it. But the point of it is the Public Health Services Act has money under Section 329 for migrants; Section 330, commercial health centers; Title V, maternal health care; Title X, Section 340, Appalachian Health, WIC. I don't know what that stands for, but these are separate pockets of Federal money.

DR. DEVINE: Do I have a copy of this?

MR. O'REILLY: No. I don't know whether you have ever analyzed where the money is coming from that is going into the program.

MR. SLOCOMBE: Could we get some guidance on the timing of this proceeding? Mr. O'Reilly has been talking now for about twenty minutes and we aren't yet through his first of his four categories.

MR. O'REILLY: Well, okay, I will try to move it along a little faster. Medicare, Medicaid, Title XVIII, Title XIX, Title XX -- now these are all separate titles with separate amounts on my schedule. Then you have state money, local money and other things.

But the point of it is -- and this is the only point I am trying to make -- is that full disclosure to you and to the public concerning the flow of funds and the source of funds as a minimum should require information on where is the $100 million coming from and where is it going.

Now I happened to go through the United States Agency for International Record, the General Accounting Office, the Department of Health and Human Services, OPM. I should not be necessary to have to go to five different agencies to try to assemble data which relates to a program of such magnitude.

And I think -- I'm talking now about the input side of this. I think it's a matter of extreme importance as to how much money goes in and where it comes from. And I think from the point of view again of management, program management, almost everybody who has looked at the Federal budget process in the last two Administrations has said that this is probably not the way to fund a program. We had, you know, ten different titles and acts. These are different hearings. The left hand doesn't know what the right hand is doing. And invariably there is another aspect to it. I have discussed this with some of the people directly involved in Planned Parenthood programs and there were definite patterns where money was shifting from one to the other.

For example, when one program was cut back in this Administration, others were automatically increased. Like Title X was cut; so the charges went against Title XX. And I said well how can that be? And they explained to me that when a patient comes into a clinic, three services are provided and they are funded by different Federal programs.

So obviously it's a judgment call, but we put the counseling and the education in one program and we put the medical services in another program. And, therefore, the Title XX, for example, which includes counseling and education, we can be perhaps a little bit more liberal in interpreting what that program is, because I noticed clear increases in the uncontrollable portions of the Social Services Program under Title XX.

If you looked at -- Secretary Schweiker had the budget at that time and he couldn't control that because that's a formula distribution and the states bill you back. But I got down to the individual level of where those calls were being made and you find frankly that when a person walks into the clinic and they are going to be charged against several different government programs and one is being cut, there might be a human temptation to charge some of that to another one.

And I think this is part of the broader issue of why we're having difficulty in controlling some of the entitlement programs.

DR. DEVINE: I think you have made that point, Mr. O'Reilly.

MR. O'REILLY: The next one, in-kind, just briefly on that: my involvement started with -- it's a long time ago but eighteen years ago I wrote a booklet which was pretty widely distributed. There were 20,000 copies that went out to the people who were funded through government programs and the purpose of this was to get something out on in-kind accounting and some of these other new things that were being introduced under Great Society Programs.

Since I was the author of this document, I had an advisory committee that worked with me, but I just want to read two paragraphs because this was the start of a series of problems where we made our best shot at how you should account for in-kind. And I just want to use this and then take you through the evolution.

Okay, in 1966 we said "Local contributions" -- I'm quoting from page 7 of the Guide to Grantee Accounting. "Local contributions must be accounted for in essentially the same manner as Federal contributions; that is they must be recorded in the books on a monthly basis and must have adequate supporting documentation. This applies to both cash and in-kind contributions. For example, when space or equipment is donated, an in-kind receipt voucher should be prepared for the value of the donation and the amount should be recorded in the journal. In-kind contributions of personal services should also be recorded monthly. Supporting records should include the signature of both the person whose time is contributed and the supervisor who verifies that the records are accurate. Supporting documentation for in-kind contributions must show the basis used in deriving the dollar value of the contribution."

Now the reason why I wrote this in as a requirement which covered thousands of organizations receiving government funds is that there was a legislative requirement. There was a legislative requirement to prove that there is a matching provision met by the local recipients of these government grants.

Now this booklet was no longer out than I got hit with an awful lot of criticism. The criticism was that it is totally impractical; it has no historical foundation. You cannot expect volunteers to be filling out time sheets and doing all these other things that you are required. So an inter-agency committee was set up and the reason for that, just very briefly, is that agency after agency started adopting those matching provisions, particularly the Department of Labor and HHS, which were heavily represented on that inter-agency committee.

All right. Since I was the initiator, I was named to represent the Office of OEO on that inter-agency committee, and I was sort of in a minority with the Department of Labor refusing under any circumstances to burden its recipients with an accounting requirement which was totally unnecessary, they felt, to meet the statutory requirements.

HHS went a step further and said we are going to introduce some sampling techniques. We've got 95,000 grantees and we cannot make them do this. Then the Office of Budget and Management got involved and says, "Well, we can't have three agencies doing it three different ways; we have to come up with a standard government-wide application of how you do in-kind accounting".

And, as a result of that, the American Institute of CPAs were brought into it because they had to certify these financial statements and they basically opposed it on the grounds of being impractical.

Again using the empirical test of experience, we found out that it didn't work. Most organizations, if you wanted to generate money, you could put a value of $5, $10 or $15 on a square foot of donated office space. On another basis, you could start donating space or having people say, "Well, I will let you have that empty building over there". You have all sorts of volunteers who you would not normally need or pay for. So criteria was developed.

That was the initial basis of the standards for voluntary health and welfare organizations in setting criteria. And that first criteria was that you could not use anything unless it can be precisely measured, precisely validated and also that it meets the test of displacement, which means that in a sense if you didn't have that on a voluntary basis, you would have to go out and buy that space.

These came along and, as a result of that, fewer and fewer organizations started doing it. Also the Federal government relaxed the matching provisions, the need for documentation. But they accepted representations; they accepted broader parameters. And finally the American Institute was in no position to audit because of the inability to certify without sufficient documentation.

And I think that is really the empirical basis for the statement which is made in the regulations, which heavily discourage it. And, as I have quoted in my statement, the pertinent paragraph, paragraph 3(c), I am quoting from the regulations: "If donated materials" -- I assume we have donated materials in this $5 million, but so far we don't know what the $5 million is, which is another important question. Before I mention this, even the Bureau of Community Health Services in the late 1970s recognized that there is a distinction between an asset -- somebody gives you a truck, you know, to use in your clinic; that truck is a donation and it goes on the books. My firm has non-profit corporations and last year I had situations where assets were donated. People would give vehicles, copy equipment, even a Xerox machine or something like that.

Yes, that by definition is a contribution and, since it is a transfer of title of an asset by all measures of generally accepted accounting principles, title has passed, it goes on the books.

Now there is a distinction between a physical asset, a truck, a building, something which is going to be on the balance sheet and maybe will be depreciated over a period of time and somebody is saying you can use that empty office down the hallway, because how do you recognize revenue and expense if you've got space or if you have personal services? It's a pass through. If you let me use an empty office and you say it's worth $500 a month, then your organization or my organization can pick up income of $500 and expense of $500. I can't pick up a differential. I can't value your letting me use that office at $500 but then expensing it at

$400.

So again the accounting profession came back and said "It's nothing but a pass through; we're going through an accounting exercise." We are putting dollars on all these volunteers and calling it income and by simple logic you have to call it expense because there is no residual property right after you have performed that service or after you have left that office distinguished from an asset, such as a vehicle or a truck or a building.

Now the Department of HHS in their regulations -- and I think these are applicable; they are not cited in your regulations but I think the intent shows the evolution -- they have made that distinction. They have put in-kind over here as this pass through thing in one category and then put the contributions of property.

And I don't think any of us as practitioners and preparers and certifiers of financial statements have any question whatsoever that, if property has been transferred with the intention to be used by the recipient, that it is an asset and it should be picked up at fair market value. The Internal Revenue says that and generally accepted accounting principles say that.

The two variations though are: one, commodities. Some pharmacists' corporation or somebody -- it better not be the government because with the government you are not allowed to use government funded properties as in-kind. I think that goes without saying even though it's not mentioned so far in any of these financial statements. It's a question though to be raised.

There certainly is a strong prohibition against having the taxpayers buy commodities under one program than it is to have them switched into another one and call it in-kind. When I was involved in this steering committee back earlier, we had a lot of organizations that were getting space and buildings and, considering that, their matching provision at the local level. With a little investigation we found out that those government -- those buildings were paid for by the government, and a regulation was issued which was accepted right across the board as an interpretation of the statute that you cannot use anything that was originally funded with federal money as in-kind contribution, a very logical accounting development.

We didn't know that when we wrote the rule the first time, and we figures well who is going to take as in-kind a government building, but they were doing it and we closed that door.

So, again, there are no footnotes on this statement. There is nothing on here that says that this is all from corporations who did not have any federal subsidy, did not have any federal or taxpayer assistance. And I think it would be an immense -- again, it's a matter of disclosure. Maybe somebody else wouldn't interpret it that way, but in the absence of anything to the contrary, I am assuming that all of these items are paid for with private capital.

But if you have the asset and it's just a pass through, let's assume these commodities are donated by a pharmacy corporation and then they are passed along to some clinic, then I think what comes into play here is page 22 of the regulations, under the title of Reporting Donated Materials. I think this is extremely relevant.

It says the following, quote: "If donated materials pass through the organization to its charitable beneficiaries and the organization merely serves as an agent of the donors, the donations would not normally be recorded as contributions nor distribution of the materials as an expense."

MR. LEVINSON: Mr. O'Reilly, are you reading from the one-sheet presentation to the OPM Director?

MR. O'REILLY: My outline which is taken from the --

DR. DEVINE: The question is: What regulations are you reading from?

MR. LEVINSON: You don't mean the regulations. You mean the standards.

MR. O'REILLY: Right, which are -- they are incorporated by reference in the regulations.

MR. SLOCOMBE: The question, I think, is attachment to our Answer 5 from last week.

MR. O'REILLY: I think I am basically saying that we have two bodies of principles involved here. We have got generally accepted accounting principles.

DR. DEVINE: Would you read that again? You were interrupted.

MR. O'REILLY: It is taken right from page 22 of the book. And let me get the exact title of that book. Page 22, Reporting Donated Materials. I have no difficulty with these standards. I think the problem here is are they being followed.

Reporting donated materials -- let's see, starting with -- okay on paragraph 4: "If donated materials pass through the organization to its charitable beneficiaries and the organization merely serves as an agent for the donors, the donation would not normally be recorded as a contribution nor the distribution of the materials as an expense." This puts it in the category of one of these in and out things which is not a residual asset.

So I think from that point -- and then earlier we have on the previous page -- we have the discussion on donated personal services. And at that point -- let me just -- on page 20, the first twenty pages are saying what I have been saying up until now, that the authors of this float out of the committees that I worked with who recognized two things:

the impracticality of the requirement, volunteers. And I'm sure that you must have run into this problem because I don't know of a volunteer organization that has not filed a complaint that the time-keeping requirements, a person who is a volunteer down at the hospital and you are asking him to sign in and sign out and certify how much time they worked, it was a burden which was universally criticized by the Health and Welfare organization and it has been dropped. And once it is dropped, it's hard to audit. And that's why it is dropping out as an accounting requirement. It doesn't meet the test of practicality.

And that is why you will find that Planned Parenthood is probably one of the few organizations that does this, which raises the broader issue: Do we have generally accepted accounting principles which are not generally accepted? And we have to look at that, because if you ask me to quantify it -- you're in the best position because, you know, even amongst the American Institute of CPAs, you have got in your files now about 200 organizations that have filed these reports and we have tried to collect some statistics so that we could quantify this for you and give you "X" percent are actually acting against the intent of these regulations and insisting on putting these values on the book.

DR. DEVINE: What is the book? You promised to identify the book for us and you didn't do it.

MR. O'REILLY: The book is the Standards of Accounting and Financial Reporting for Voluntary Health and Welfare Organizations.

DR. DEVINE: Would you mind if Mr. Slocombe interrupted you?

MR. O'REILLY: I'm sorry.

DR. DEVINE: Would you mind if Mr. Slocombe interrupted you?

MR. O'REILLY: No, no, go ahead.

MR. SLOCOMBE: We will save us all a lot of time. That's the only reason I asked to interrupt is we represented in our statement no voluntary services or counted in in-kind contributions.

MR. O'REILLY: Well, it doesn't say that on the financial statements. That's our problem.

DR. DEVINE: They said that in their response yesterday, or the day before yesterday.

MR. O'REILLY: Yes, you see, the point is, what this leads you to is this is why I think again your regulations are wisely worded, that you want a validation, you want an independent validation.

The other day it was mentioned about you would have to do a whole audit of the United States. I think that was possibly in a different perspective than I would put it. I think basically auditors do rely on the work of other auditors, but I think that maybe there is something in between. For example, I can see the burden of saying there should be another audit, you know, of this statement, but I think the work that we generally do in accounting, we call it a compilation. A compilation is something in between this, which has absolutely no independent validation whatsoever, as far as I can see, none, and an audit. There is something in between which is called a compilation. And a compilation is when the independent auditor is asked to prepare the statement but doesn't certify to the same degree that an audit has been performed, but he does certify that he has made reasonable investigation and there is no material inaccuracies in the statement.

And I suggest, Dr. Devine, that even a compilation would give a sense of reassuring that this speculation that there are no services involved in there, I don't question Mr. Slocombe on that. I accept his word, but the whole purpose of auditing is to prove that Mr. Slocombe is correct. It's to prove and just feel comfortable that these representations that he has been making here are accurate. It's not to say he is wrong.

I think if there are no services involved, I'm curious as to why the Family Planning Headquarters doesn't have anything in that category. Don't they have any volunteers? I don't know, but I'm wondering whether the same accounting principles have been applied. I do suggest though that there should be some verification to at least validate the representations which are being made, and I think that is the very purpose of the regulation.

Going on to the 50/20 test, obviously the 50/20 is a function, depending upon what we use in our base. I have done several things: I have obtained from the Department of Health and Human Services over a period of time very routinely, as a matter of fact, reports on not only Planned Parenthood but other grantees. These reports are prepared routinely. They are provided freely under the Information Act, and they are extremely informative because what they do is provide for the grantee the total source of all its revenue, not just the portion that it receives under that program.

And, again, I only used about $4 million worth of program to come up with a percentage of 3 point -- let me find that sheet here -- it's the adjustments that I made in the calculation of the base with the 50 percent. Here it is.

I used 2.2 percent for Medicaid. And the reason I did that is, as I have become more familiar with your regulations, it does say in there at one place, you know, you talk about Federal funds and then in another place it talks about excluding Federal funds -- the Medicaid from that base.

So I was trying just to make a test here to see how do you come out if you consider Medicaid as local funds, which I, you know, would not agree with, but if you want to make a calculation, I did that on page 3. And I took out $700,040 based upon the Planned Parenthood reports filed with the Department of Health and Human Services, which showed that 2.2 percent of the patient service fees came from Medicaid. I don't know how good that figure is because I have aggregates from HHS that show, as the next line indicates, that primarily it's Title XX, the Social Services Program, where the allocation is made by formula.

But I have followed that through in much greater detail. For example, in Maryland all some $2 million a year goes to the State Health Department and then it is broken down according to a formula to the various counties. I just can give you a copy of how that is done because it does illustrate vertically the flow of money. (Handing document to Dr. Devine.)

I was trying to do a vertical analysis of how the money reaches the clinic, and what this indicates here is -- this is just taking one grant and I took Maryland because of geographic convenience, and this shows how the various counties received the money. And then in here on line 23 and 24 you have Planned Parenthood Association of Maryland. And I did contact them and I talked to the Director. And to the best of my knowledge that's 100 percent Federal money. There is no matching provision.

So constantly, when I have made my assumptions in terms of state and Federal, if anything, I think if you did an exact calculation on it or tried to be more precise, you find probably that I have underestimated the amount of Federal funds which are actually flawn through the program.

I have another report from the Department of Health and Human Services which deals with an aggregation of a number of grantees. Now the defect in these numbers is that it includes more than Planned Parenthood. It includes Planned Parenthood plus other grantees. But I think the questions that they raise are significant because of the high percentage of Federal funds which are going into the program.

(Handing document to Dr. Devine.) I only have one copy. Let me just read this off. This is an analysis of $302 million of Federal funding from a variety of programs for family planning reported by Planned Parenthood and other recipients of these grants, $300 million. And of that patient services, which I think is the category in question -- the question which is unanswered in this Planned Parenthood submitted data and which I have been trying to answer from independent sources just to validate it, how is this broken down? Who is paying for the patient services, the government or the patients?

And what you get is a breakdown as follows: Title

XVIII, Medicare, 2.8 percent; Title XIX, Medicaid, 25 percent; Title XX, Social Services, 40 percent; third party, insurance companies, 10 percent; the patients themselves, 21 percent. Now again that is an aggregation of a number of grantees participating in the program with Planned Parenthood, but obviously what it does indicate that a substantial amount of the money is funded under Title XX. And I forget whether the match there was 80 and 20 or perhaps even more Federal.

So I have concluded, Dr. Devine, just based upon the analysis that a reasonable presentation of the facts and the figures, using data from other sources, raises serious questions as to whether PPWP meets the 50/20 test. And again, I would think on the basis of these questions being raised, there is a need for some validation. And I think if it is not to be an audit, at least it would be some additional information on the source and application of those funds and a presentation of the composite.

I think also it is clear that the regulations do strongly suggest that this $5 million in question is not a prevailing practice. Again, I can't quantify it, but I have done some checking and I think Mr. Sweeney has done some very good analysis on that. And I will leave that to Mr. Sweeney to present it, but I think again your own office might be the best ones to say what percentage of the 200 agencies that have applied have created either $5 million or any amount of dollars by using this technique. And if it is done by a very small percentage, we have that accounting issue. Remember, I told you we can't go as a science all the way because even under AICPA a promulgation by an authoritative body becomes generally accepted accounting principles.

But you become rather a laughing stock. I represented U.S.A. in some of the international conferences. We were trying to work on international accounting standards. And this is where I have spent -- I have been overseas for several months this year and the things the United States used to do are historical cost basis, a failure to accept current value accounting. They consider a little bit arrogant in a way to start talking in this inflationary thing where all these other countries of Latin America and Asia are going to indexing. And we say that we have generally accepted accounting principles but fewer and fewer international organizations are following that.

I think we are somewhat in the same position there. It's a term that has a lot of significance, but I raise this question with you: Do we have generally accepted accounting principles when they are not generally accepted?

Thank you.

DR. DEVINE: A couple of questions please. This accounting of funds that shows up as page 3 on your letter dated September 7th, 1983, does this purport to be your estimate of the total funding of Planned Parenthood Federation of America and International Planned Parenthood Federation?

MR. O'REILLY: Well, that portion which I could clearly identify as Federally funded and state funded; in other words, I tried to identify in here the portion which is financed by the taxpayers.

And the first three items, I think, are pretty clear. I think when we get down, we do have state and local funding of 31 and I haven't got that split. So it does represent at this point a composite, except that -- excuse me; wait a minute; I'm sorry. Let me see whether that was an adjustment.

I have taken in some months' schedule the 80 percent figure based upon what I think is a valid assumption that 80 percent of state-funded programs utilize Federal funds. That is the -- that's taken from the Planned Parenthood Federation of America statement.

DR. DEVINE: Which one is?

MR. O'REILLY: The 31,820,000. Now what I did on my calculator here is to take out the state portion of that. I did a supplementary calculation which is not on here but approximately -- let me see whether this operates.

We have 31,820,000 times 20 percent equals 6364. So $6 million at the most is state money. So what I did -- it's not on this sheet, but I did it just as a supplementary calculation to assure myself that they still couldn't pass this 50 percent test is if you take --

MR. SLOCOMBE: Would you do the subtraction? Take that out of the 116 million.

MR. O'REILLY: Take out $6,300,000, so it leaves you with a base of $110,352,000.

MR. SLOCOMBE: And on your numerator give us that as a percentage of 213.

MR. O'REILLY: Okay. And then if we take it out of the numerator, we have to take it out of the denominator. So we have 207,008.

So if you do a calculation as to what is the percentage using Federal money, you get 110,352, divided by 207,008, equals 53.3 percent, which is substantially above the maximum allowable amount of 50 percent.

So, Dr. Devine, no matter how you look at the numbers, you can't get close to that 50 percent.

MR. SLOCOMBE: I object to the introduction of this calculation, not because it produces a number over 50 percent, but because it includes grants which were not made to Planned Parenthood. On its face, the first three items are not made to Planned Parenthood Federation of America, which is the entity at issue here. And it is a document which is entirely based on Mr. O'Reilly's idea of what ought to be the rules, not what the rules are.

MR. LEVINSON: Please continue, Mr. O'Reilly.

MR. O'REILLY: All right. I think I answered that question, that basically it's $110 million of Federal funds and that's 53.3 percent of the total funding.

DR. DEVINE: The 200,318,000 from the Planned Parenthood Federation of America, that comes off the combined sources of funds and cost report?

MR. O'REILLY: The first three digits come from U.S. Agency for International Development; the 300,000, the 290,000 and the 12 million is monies which was reported Wednesday as co-mingled, I believe. I'm not aware of that, but I --

DR. DEVINE: You have under total funding of the entity, you have two entries: USAID funding of International Planned Parenthood, $12 million; and the next line Planned Parenthood Federation of America, $200,318,000. That comes from the combined sources of funds, total public support and revenue from Planned Parenthood's submission? Is that correct?

MR. O'REILLY: The $200,318,030 does, but the other $12.6 million is the money that I think should be included which was not included.

DR. DEVINE: I understand.

This is a submission on the 50 percent criterion. You are not making any representation about the 20 percent?

MR. O'REILLY: The 20 percent, I turn to page one of my statement on September 7th. I have taken the $43,975,000 reported on the combined sources of funds and cost report, which includes the estimated and the unaudited amount of $32,552,600, and I have made an adjustment for what is reported as an estimated unaudited in-kind amount of $4,581,600.

DR. DEVINE: You subtracted out the in-kind contribution?

MR. O'REILLY: Yes.

DR. DEVINE: All of it?

MR. O'REILLY: I don't have any information on what it is made up of. I think that's one of the questions --

DR. DEVINE: And you added in the International Planned Parenthood Federation, the $12,690,000? Is that what you did?

MR. O'REILLY: I added the $12.6 million into the total of funding. On this calculation thought I did not include the $12,690,000 on the basis that -- now the percentage gets smaller. I can do that very quickly though.

If I just put in my base an additional 12 million -- I use 208,426 and I could add to that the International Planned Parenthood Federation of $12,590,000, which gives you an adjusted basis of --

DR. DEVINE: Is not that already on the first, second, third, fourth, fifth, sixth, seventh item, Federal payments

IPPF, Note 4, $12,690,000?

MR. O'REILLY: If we are talking about the calculation of a 50 percent, the answer is yes. If we're talking about --

DR. DEVINE: I see you have a sub-category, the 50 percent.

MR. O'REILLY: Okay.

DR. DEVINE: But you're adding that into the 100 percent on which you are taking the 20 percent.

MR. O'REILLY: That is correct; yes, yes, right.

DR. DEVINE: Do you have any other questions?

(No response.)

DR. DEVINE: Thank you.

MR. O'REILLY: Thank you.

DR. DEVINE: We had one gentleman who remained on the agenda from the last meeting.

MR. SWEENEY: Mr. Devine, we have our presentation.

DR. DEVINE: When we left last meeting, we had said that there were two items of unfinished business: one was hearing from Reverend Cleveland B. Sparrow; the other was a request by Mr. Slocombe to make a comment in rebuttal. We argued that other people here had the opportunity to place themselves forward at the last meeting.

However, since Mr. Slocombe has asked for rebuttal, if he exercises his right for rebuttal, I will allow a like right to be made after Mr. Slocombe.

MR. SLOCOMBE: That's a violation of the agreement with your counsel last Friday.

DR. DEVINE: Well, I think, Mr. Slocombe, allowing you to speak, which I was willing to do -- that's correct, our agreement was that no one would, but certainly, if I allow you to, which was a violation of a narrow reading of what we said, but if you feel that it's appropriate for you to make some statements, I think it's certainly appropriate for anyone else to.

MR. SLOCOMBE: Dr. Devine, the agreement was that at the conclusion of the statement from what you described as interested parties, a Planned Parenthood representative would have an opportunity to respond to material which they had advanced, that is what you rightly described as a rebuttal statement.

DR. DEVINE: I understand from counsel that Mr. Slocombe would have the opportunity to end the meeting. So why don't we allow you to proceed now.

MR. SWEENEY: Thank you, Mr. Devine.

I might point out that we were part of a presentation that Dr. Glasow started and said that he would finish up. So this was the right to life presentation.

Dr. Devine, my name is Warren Sweeney. I am the Executive Director of the Natural Right to Life. I would like to address you today on the presentation submitted by

Planned Parenthood and start off by citing their presentation to you earlier, page 6, if you have that in front of you.

DR. DEVINE: Yes, we have it. Please continue.

MR. SWEENEY: Okay. It starts with Section (d), sub-(d).

DR. DEVINE: Yes.

MR. SWEENEY: Okay, I would cite down their reference at the end of that paragraph, and they are the ones who are citing this. So it is not new to them, that they are identical. In the last sentence they state, "Two major charities such as Leukemia Society, American Lung Association, American Diabetes Association and United Way.

The first section of papers that I have presented to you are the consolidated sources of funds and cost report of those four organizations. If you will note, not one of those organizations present in-kind contributions as part of their sources of funds and cost report. So Planned Parenthood is not identical to these four reputable major charities in their presentation of financial data according to the requirements of the regulations.

DR. DEVINE: Would you read for the reporter what those organizations are?

MR. SWEENEY: Those are the American Diabetes Association, the Leukemia Society of America, the American Lung Association and the United Way of America.

And my first submission is a copy of their sources of funds and cost report submitted for this year's application for their participation in the campaign.

I would like to point out that this is in substantiation of Mr. O'Reilly's claim that this is unusual practice to use in-kind contributions and Planned Parenthood has not reported identically in these four organizations whose revenue add up to $127 million; there is not one dollar of in-kind contributions reported.

My second presentation --

MR. SLOCOMBE: Mr. Devine, could we have someone read the whole of page 6 so that the record will show that there definitely is no claim there made about whether or not these organizations did or didn't have in-kind contributions? It has to do with whether they have affiliates.

MR. SWEENEY: That's his point, Mr. Devine. I will make my point; he is free to make his.

My point is in their last statement, the sentence reads, the last sentence of their first paragraph on page 6, "The accounting practices adopted by Planned Parenthood in respect of its affiliates are identical to those adopted by many major charities such as Leukemia Society, American Lung Association, American Diabetes Association and the United Way."

Now they would hold these four charities out to you and to the Federal employee as reputable major charities. We would also follow suit.

DR. DEVINE: I think both points have been made. Proceed.

MR. SWEENEY: Okay, thank you.

The second submission: again, I would go to the certificates and statements from these various organizations, many by their own financial staff, all of them by their certified public accounting firms, all big aid firms.

If you will turn to the data, the first by a staff member of American Diabetes Association, they conform to the standards.

The next, by Coopers & Lybrand, their public auditors in their statement,on the third page they conform to the standards.

The next, the Leukemia Society of America in their annual report have copies of their auditors' report by Ernst and Whinney for the national headquarters; they follow those standards. However, they even go further and do the impossible according to Planned Parenthood, they have their auditors certify that their combined statement, including all their affiliates, is certified by their auditor and the auditor also certifies that those affiliates in this combined statement that the standards have been used there.

Price Waterhouse for the American Lung Association, we confirm -- and I would like to note that word -- we confirm they are in accordance with the standards.

And finally, Arthur Andersen and Company for the United Way, they conform with both the industry audit guide and the standards, with both. And for the United Way Mr. Benade signs that statement for them.

So we have certification by four of the big aid public accounting firms in this country. It can be done; it can be done for the consolidated statements. I enter that into the hearing.

Lastly, let's turn to Planned Parenthood of America's audited statement. Note number one, summary of significant accounting policies, the second paragraph of that note number one appears to me to be a qualified statement. "The financial statements have been prepared substantially in conformity" and that's in conformity with the guide, not the standards. Okay?

DR. DEVINE: Would you please identify that and read it in full?

MR. SWEENEY: That's in the Peat,Marwick and Mitchell financial statements of December 31st, 1982 for the Planned Parenthood Federation of America. Okay? And the page that I have attached as copied out of that report, as submitted with their application to you, it starts out with a (1) in parentheses "Summary of Significant Accounting Policies". Do you have that?

Okay. The second paragraph --

DR. DEVINE: I have it, but I want you to make it clear for the record.

MR. SWEENEY: Okay, the second paragraph states, "The financial statements have been prepared substantially in conformity". It does not say they do conform --

DR. DEVINE: Well, you're not quoting. You were going to quote it.

MR. SWEENEY: "The financial statements have been prepared substantially in conformity with the industry audit guide". I think I am quoting. The second paragraph there, not the first.

DR. DEVINE: Continue, entitled --

MR. SWEENEY: "Entitled" -- well, I have blocked that out -- "Audit Guide Health and Welfare Organizations published by the AICPA". It is not the standards. And by looking at your records, you can find an unmarked copy of that.

The next page, the statement that appeared with their application from Mr. Fischer, okay, and I would note well he never states Planned Parenthood in this statement. He states in the second sentence "generally accepted accounting principles for organizations such as Planned Parenthood", such as. He does not state for Planned Parenthood. Again a very carefully worded statement that does not state, as I pointed out in the Price Waterhouse statement in the prior submission, that they do conform to.

So it appears to be a qualifier in their financial statement and that's qualifying their conformity to the guides, not even the standards which are required by CFC regs. Here again, this is not a statement about Planned Parenthood but for organizations such as Planned Parenthood.

Next we have the affidavit that was presented by Mr. Slocombe to you at the session of these hearings two days ago. I would take you down to the middle of the page where I have underlined "general conformity", a nice, nice mushy word for a very precise science like accounting.

Down to the next one, the revised audit guide are broad accounting principles, and here I refer you to Mr. Slocombe's answer when you requested are these standards, guide or other guide and the standards identical, and he said they are the same.

I refer you to the deposition he presented to you from their own auditor and he says, "the revised audit guide, they are broad accounting principles". Okay. We go down a little further and he says, "the revised standards set forth in detail, standards for organizations to follow". In detail, and there is the difference. And that is what the CFC regs reach for, the detail to assure that the financial data they are getting conform to the standards that are required in order to judge whether they are meeting all the criteria presented to you. And again, he ends up "in most cases". The last sentence there: "Therefore, compliance with generally accepted accounting principles will in most cases" -- another very mushy presentation of what is supposedly a statement about Planned Parenthood following the requirements of the standards that are held forth in the CFC regs.

The next page, I would just refer you to these statements where he is attesting to some kind of a statement about their consolidated statement and he says, "I am informed"; again, "I am informed" and in Section 5 "I am further informed". Then in Section 6 Peat Marwick cannot render an opinion or report on the combined statement. That's their statement right there to you. They are not giving you an opinion on that statement, and again he is further informed.

I am not a lawyer, but it sounds like a lot of hearsay to me.

Lastly, I would refer you to -- and again this was part of their presentation but it's merely a copy of the regs, except I copied another section of it in broad black lines -- Appendix B to Subpart D, the certificate, which states, "I certify". That's all we're asking for. We are not asking for in general, sometimes generally broad. We are asking for the standards not the guide. We are asking for the detail not the generality. And we are asking, like the other four major charities, that their auditors affirm this. And this has not been done.

They have not presented the certificate which states that "I certify that the above-named organization has adopted and has prepared its financial statements in accordance with the *Standards of Accounting and Financial Reporting for Voluntary Health and Welfare Organizations*." This is CFC requirements. This is something that you just read that they wouldn't even testify to that combined consolidated statement.

So again, by their holding up for their purposes four very major reputable charities, we can look to those charities to set the standards that CFC is looking for and asking for and that Planned Parenthood has not complied with; a very simple certification is all that is asked for. And out of all of this hearing we find out it's all that's missing, 190 local affiliates. Who knows?

So, ergo, I would say the $4.6 million in-kind contributions,with 2.2 percent of that 20 point whatever, should be thrown out. Nobody else uses it. There is nobody to substanciate they are using the standards. So, therefore, you could take all their numbers, all of their numbers that are reported here to you on this consolidated statement, throw them out, because they haven't certified and their accountants have not certified to you in three different statements -- their own financial statement, the statement with the application and the statement that they brought here to answer the issues that you specifically requested of them. You still cannot get a straight answer out of them as required by the regulations.

And lastly, in addressing entity, again, Mr. Devine, if you refer to the Planned Parenthood minutes of the last year, you will see where a gift of $500,000 to be given over the next several years by either the Packard or Hewlett where they intimated that they wanted some of this to go towards international operations was then a $50,000 gift receipted over by the Planned Parenthood Federation of America Board of Directors to IPPF, which shows that they are indeed all one entity, and the data that Mr. O'Reilly is entering into testimony here isn't that valid, because what you have is PPFA is merely the fund-raising conduit for IPPF and, therefore, they are affiliated.

And I would refer you to those minutes, of which I don't have a copy, but I know they are available in Planned Parenthood's application.

Thank you.

DR. DEVINE: I didn't understand the last point you made. Would you say that --

MR. SWEENEY: The last point was that Planned Parenthood was given a $500,000 gift by either the Hewlett or the Packard family, whatever Hewlett and Packard computers, the people who own them, gave them $500,000 to be given over the next several years with the request that some of this money be targeted towards international programs for Planned Parenthood. The Planned Parenthood Board, in order to honor that request, voted $50,000 out to IPPF, which again substantiates the fact that they are in fact all one entity, and their data must be included, if anybody's data should, in the compilation of who is doing what to whom here in terms of taking in money and passing out money.

Unfortunately, all the data is questionable because they are not in conformity with the standards and nothing yet presented by Planned Parenthood so far, either to the public in their audited report, to you in the application or to this hearing in their response to the issues, have answered that question and certified that they do in fact follow those.

So on those grounds, I think all of their numbers are just disqualifiable.

DR. DEVINE: All right, thank you, Mr. Sweeney.

MR. SWEENEY: Thank you.

DR. GLASOW: I am Dr. Richard Glasow, Educational Director of Natural Right to Life, to sum up the right to life presentation.

Mr. Slocombe complains that Planned Parenthood has been singled out. Poor Planned Parenthood, special treatment, so forth and so on.

The fact is out of 150 groups that applied to the CFC last week, they were the only one that received public comment,period. They have not been singled out except by the public to come in and raise these issues.

Slocombe attempts to confine the issues of the discussion to his agenda but not what was jointly decided by OPM and PPFA. I should also mention that Natural Right to Life did not have any part in setting the issues that were substantiated or unsubstantiated here except to raise the issues in our complaint.

The issues are clearly stated. They are in black and white. Planned Parenthood just doesn't want to discuss them because they are going to end up losing. They can't hit these issues directly because they are going to not satisfy the regulations.

Their posturing this hearing shows a stubborn, bellicose attitude. The spokesman, Mr. Slocombe, tries to place the burden on OPM to show that Planned Parenthood is ineligible, when actually the burden is on the applicant, Planned Parenthood Federation, to prove that it meets the criteria.

The attitude is "How dare you question our eligibility? We believe that we qualify and that should be good enough for you too." The issues of whether or not Planned Parenthood meets the specific rules are pushed aside. Apparently they believe that it's beyond accountability to the regulations. They are not accountable to the Federal employees and they are not accountable to the agency that is supposed to ensure that the public good is being served and the regulations are being carried out.

Planned Parenthood's contempt for the processes is evident in the perfunctory manner that Mr. Slocombe demonstrated all the way through this. They didn't even bother to bring their independent public accountant or their financial person to answer questions. Perhaps if they came, they might have to answer with embarrassing answers.

As it is, Mr. Slocombe just pleaded ignorance to all the financial questions that were the majority of the issues raised here, or he said the question wasn't germane if he didn't want to answer it. Obviously, the agency is not interested in an open discussion of these issues.

Planned Parenthood is ineligible. It does not meet several criteria for inclusion in the CFC, not just one. The regulations are clear-cut and objective. Either the organization lives up to the standards or it doesn't.

Mr. Slocombe likes to focus on other issues, skirt the main questions and use innuendo to attack the people that have raised the issues. These are not new issues that have been raised here. These are issues that have come out through the Eligibility Committee process and the questions we have raised here are right off of Planned Parenthood's own application. If anybody should be familiar with their minutes and other things that are raised here, it should be Planned Parenthood.

Now let's go through the questions. What agency is applying? This is very important and, as Mr. O'Reilly outlined, you have got to look at the total entity. There are several organizations here. If you scope them out, they are all separately organized. They are all separately operated. They all have the Planned Parenthood name. That is the trademark.

However, let's look at them. There is the headquarters. There are the 190 educational affiliates, educational medical affiliates. You have public affairs offices at a state level, as Mr. Slocombe himself pointed out. There is an insurance affiliate that is discussed in great details through the Planned Parenthood Board minutes. That is an affiliate; they pay money to it; their local and domestic affiliates are directly involved in a very strong fiduciary sense and you have the International Planned Parenthood Federation of America. You have the Association of Planned Parenthood Professionals, which is headquartered in their building in New York.

Planned Parenthood says, "Oh, well, even though there is independent internal transfers of money, there are interlocking Boards of Directors, we will decide that certain of these corporations and entities will be in our application and certain other ones won't." That is a very important point. They are arbitrarily deciding, out of all these corporations where money goes back and forth all the time, that they are going to segregate and say for our purposes this is the entity and we are not going to bother to discuss anybody else.

What happens on the insurance program? Is that a not for profit or not? Are they making money on that? Where does it show up on their financial statements -- the Association of Planned Parenthood Professionals. These are all things that right in their own application and they don't bother to want to discuss them.

The issue becomes even more important when you look at where the proceeds of the CFC -- when people give money in Washington or New York or Rice Lake, Wisconsin, where does that money go? Two-thirds of it goes into overseas programs, but Planned Parenthood doesn't want to discuss where half of that money is going to go. They want that entity to be excluded.

Mr. O'Reilly showed the interrelationship of these entities very well, I think. You have to look at both the source of the money and the final use of it. Where is it actually spent?

The applicant doesn't want to do that because it is going to hurt his case, as Mr. O'Reilly pointed out very well. The real entity that is participating fails to meet the CFC criteria, pure and simple.

Planned Parenthood made the departure from the definition used by accountants because it serves their purposes. They don't want to use the regular things because it doesn't fit.

Turning to the second question, affiliates' data. Now they say that they are not able to provide or not required to provide audited financial statements. The regulations say that the audits must be done and there has to be a certification. Planned Parenthood does not do this. As Mr. Sweeney pointed out, the accountant equivocates when he says that it does not live up to the standards. He sort of waffles.

Now Planned Parenthood in their presentation here has posed two extremes: either you accept the Peat Marwick audit of the headquarters, or they would have to go to the terrible extent of going out and having Peat Marwick doing 190 affiliates. But the latter is too expensive,they say.

However, one of the organizations they hold up as an example, Leukemia, as Mr. Sweeney pointed out, does provide such an audit, a certified one by one of the big aid accounting firms in this country. Planned Parenthood even refuses to do something in between the two extremes.

What if there was a statement by an independent outside source that says, "Yes, we have examined all their audits and, yes, there is a certification in all of those audits that the standards have been upheld, that the audits on the Planned Parenthood in Kansas City, Missouri is done in accordance with the standards". That is easy to obtain, but you can't take the statement of an internal person because that's not what the regulations require.

Planned Parenthood holds up these four organizations as examples. They don't have to provide the audits, but three of the four don't include their affiliates in the sources of costs and funds report. The other one does and it is all laid out for everybody to see and it is certified. Planned Parenthood's case doesn't hold up.

The third and the fourth questions on the 50/20 rule, Mr. O'Reilly has pointed out that they don't meet the test. Let's find out where PPFA and all of its affiliates gets CETA money, Title X money, Title XX money. We can even leave out Medicare which is a later question. Let's not discuss that. Let's just focus on all the money that comes into program service fees, such as Title XX, and it goes into their coffers, and it is not counted properly as Federal money.

Turning to in-kind, the audited amount, as they say, is completely unsubstantiated. Accountants can rely on other accountants' data. There the Peat Marwick can go through the applications or the audits that have been provided to Planned Parenthood and take a look at those and give you a certification. They just don't want to do it because that in-kind would just drop right out. Peat Marwick won't let the headquarters use it.

Deceptive ads: The letter in 1981/82 Mr. Slocombe tried to just blow smoke. He knew that that was not accurate when he made that representation, as Mr. Bopp's presentation to you said very clearly last Wednesday and the documents I provided to the OPM today, and I also gave a copy to Mr. Slocombe, show that they were using that letter in 1982. Pure and simple: they just don't want to have to discuss it. That was a deceptive ad, a deceptive means of raising money. And that went out to thousands and thousands, if not hundreds of thousands or millions of people, because that's the way the prospect mailing is done.

On the question of the CPC advertising to people, it is misleading when you use a third of the money domestically and there are no representations from Planned Parenthood except what Mr. Slocombe said, there is nothing audited that said any of that 35 percent that goes to their affiliates in this country which is substantiated by documents in their own application is ever going to be going overseas.

And thirdly, Miss Wattleton herself contradicts herself in letters between -- to Dick Leary of the ISA and to Mr. Bowser. And while we are on deception, I think it's important to point out that the letter to OPM on August 31st says that there are no ties between the CFC money and abortions but that is absolutely belied by the letter that is in Planned Parenthood's own file in OPM, in which Miss Wattleton said that there is indirect relationship; the money is abortion-related. That relationship that allows a split between Planned Parenthood, its domestic affiliates and the IPPF is still in effect, there is no change. Planned Parenthood is using the money for abortions and they are lying when they say that they are not.

I would just skip over the loans funds issue. And finally on the public support issue, Mr. Slocombe was just flat wrong, as we have shown in the documents we have provided to you. He doesn't want to answer that issue; he doesn't want to provide you with documentation. He tried to slide by it by saying that we are dealing with 1981 data and let's just not touch on that, but that's a deceptive issue and it shows that they are not going to come up with the facts that really will show you what's happening.

DR. DEVINE: Reverend Sparrow.

REV. SPARROW: Dr. Devine, Mr. Brooks, Mr. Levinson: My name is Reverend Cleveland B. Sparrow, Sr., Minister to

Sparrow Baptist Temple, Chairman of the D.C. Moral Majority.

Mr. Chairman, and Members of the Hearing Committee: I am pleased to have this opportunity to appear before you to express my profound objections to the irresponsible financial operation of Planned Parenthood.

I would first like to express my appreciation and admiration on behalf of the Sparrow Baptist Temple and D.C. Moral Majority pro life support, as well as the unborn who cannot speak for themselves to the National Eligibility Committee and especially to the Director of OPM, Mr. Devine, the wise and courageous effort to stop the wasting of Federal funds used to support the American holocaust which has already victimized about 20 million American babies.

Your efforts are indeed outstanding when you consider that the U.S. Supreme Court has miserably failed to protect American babies and the organizers of speakers of the 27 August 1983 March on Washington were unable or unwilling to address the issue which you are now considering, the purpose of Federal funds.

I am particularly concerned about the 50 percent Federal fund requirements which Planned Parenthood has apprently failed. I was present on Wednesday, 7 September 1983 when the representative of Planned Parenthood made his presentation. I believe that the presentation of records, the answers given to your questions and the information of record given by opposing organizations will clearly support a decision to abort Planned Parenthood's combined Federal campaign funds.

It is a matter of record that Planned Parenthood has taken the position that, as long as they meet the technical requirements, they do not care who dislikes the purpose for which the funds will be used. They consider the purpose for which the funds will be used as a little thing and therefore unimportant. That reminds me of the story of a a girl who was asked if she was pregnant and the girl responded, "Oh, just a little bit."

So when Planned Parenthood failed to adequately address the purpose of the Federal funds they have recieved, they have failed to address the most important reason for the participation in the combined Federal campaign fund.

The information of record clearly shows that Planned Parenthood is promoting a program of genocide in America and around the world. They claim that their purpose is of little importance. It's like saying that as long as the technical requirements of the German holocaust were met, Hitler's purpose was irrelevant, to the Jews were not important. That is, so long as the trains ran on time, the soldiers were paid on time, the proper amount of gas was turned on, the purpose according to Planned Parenthood was of little importance.

Further, if you will apply the same principle to the Korean airline that was shot down by the Russians with 269 civilians aboard, Planned Parenthood would take the sides with the Russians that the technical requirements were met. This international barbaric act of taking innocent human life took place on the same day, 31 August 1983, and at the same time that the purpose of the use of Federal funds by Planned Parenthood to take innocent human life were being considered by the National Eligibility Committee.

Therefore, I am unarbitrarily opposed to the position of Planned Parenthood that the purpose is of little importance.

Third, expenditure of Federal funds: I believe that the question regarding the 50 percent requirement relative to Planned Parenthood is should the office of Personnel Management prohibit the use of combined Federal campaign to pay for abortions unless the life of the mother is in danger? This question is identical to U.S. House of Representatives' Bill H.R.3191.

During the discussion of that bill, Representative Christopher H. Smith, Republican of New Jersey, said the issue today is simply whether or not the taxpayer will continue to fund Federal employee abortions. At issue today also, Mr. Chairman, is whether or not we will bring the Federal Employee Health Benefit Plan in line with other abortion restrictions in force today, most notably the Hyde Medicaid amendment.

That is before us today, Mr. Devine, whether OPM will bring the CFC in line with other abortion restrictions in force today. I am uniquely aware of the Planned Parenthood's bringing of matters such as their $3.8 million campaign opposing the Human Rights' amendments. However, I remind you that we have been successful in opposing such evils in the past. More than 280 Congressmen supported the effort to defeat the Sexual Perversion Bill, D.C. 4-69. This was over the objection of The Washington Post, the D.C. Mayor, the D.C. Congressman, the D.C. City Council and more than 60 groups like Planned Parenthood. We stand firmly with you on the matter along with other groups that have appeared before you, the 226 Congressmen who voted for H.R. 3191, the unborn who cannot speak for themselves, and the President of the United States, President Ronald Reagan who has been standing firm in this area for a long time.

And finally, number four, Planned Parenthood affiliates: On 7 September 1983 I heard the representative of Planned Parenthood give an inadequate explanation of their accounting procedures relative to local affiliates. And I would just add here that I am also a computer systems analyst and the kind of information that Planned Parenthood has presented is very easily -- it could be said that they are ten years behind the state of the art in presenting their information.

Upon a request to D.C. Congressman Fauntroy, conducted a review of abortion costs in Washington, D.C. It was determined that the D.C. Government spent over $1 million to promote abortions, not less than $18,000 on alternative programs. While we know that approximately $100,000 were spent for a condo party sponsored by Planned Parenthood, this report does not show that expenditure.

The expenditure is not identified in the Congressman report which is attached as Exhibit 1 for your information. On September the 7th, 1983 the President of Planned Parenthood stated that there was an operating budget of $12 million in Federal funds. She stated this on WRC Radio in Washington, but in less than five minutes she said that the operating budget was $50 million of Federal funds.

In each state -- if each state in the United States is provided -- is providing from $1 to $5 million per year to operate this genocide program,like the D.C. Government, the budget goes up to $150 million which has been really addressed here today. This is without consideration of the contributions from 100 foreign countries in the Planned Parenthood international operation of genocide.

Now if you have an -- you have an obligation to all concerned to abort the Planned Parenthood irresponsible financial reporting of the combined Federal campaign's funds. It is unbelievable that such funds are given to such organizations to promote the American holocaust while thousands of people are hungry and stand in lines hours to receive cheese and butter made available by the Reagan Administration. A baby died of starvation across the street from the Redskins football stadium where one player alone received an estimated $1 million in salary.

The Almighty God has said in his holy word that Thou shalt not kill. The violations of God's commandment is sin. The wages of sin is death. Women do not have the final word on the matters concerning the body. God said in his holy word, First Corinthians 3(16 and 17), "Know ye not that your body is the temple of God and that the spirit of God dwelleth in you? If any man defile the temple of God, him shall God destroy; for the temple of God is holy which temple ye are".

Thank you.

DR. DEVINE: Thank you.

Mr. Slocombe.

MR. SLOCOMBE: Let me start by repeating that the issue in this proceeding -- that this proceeding is, I believe, not an effort to find answers to questions, but to find some question which will provide some basis for excluding Planned Parenthood.

I think the answers which we have given made clear that there is no serious technical question about our qualification. I want to begin by recurring to some matters which were raised at the previous hearing because Plannad Parenthood has been accused of being unwilling to answer questions.

In the conference which you directed be held on Friday, September 2nd, with Mr. Morris and with Mr. Levinson, it was clearly agreed that the administrative hearing would be strictly limited to nine specific questions, identified by them. Those are not our questions; they are the questions in exactly the form cleared by them as the subject matter of the hearing. And they agreed at that time that those nine questions were the full set of technical matters of concern to you and presumably referred to in your letter of the previous day.

Despite that understanding, new questions were raised on last Wednesday on entirely unrelated subjects, and indeed more have been raised today.

With respect to the questions raised on Wednesday, and without waiving our objections to this procedure, but to make clear that far from wishing to avoid answering questions, we will answer any question where we have reasonable notice of the question so that we can find the answer, I have the following answers to submit to matters which were raised last Wednesday.

One: Mr. Levinson asked in what category the funds reported to the IRS on the Form 990 are reflected in the funds and cost report. The answer is that the funds are allocated among the functional divisions of PPFA based on the time spent on the people involved and the subject matter and the work of those divisions. The largest amount is allocated to the category of Service to the Field of Family Planning.

The second question was an issue raised: By what amounts are the affiliates' payments to PPFA reduced based on CFC receipts in the affiliates' area? The answer is that about 25,000 is the amount by which the so-called fair-share payments were reduced in 1982. That's not 35 percent of the total as was suggested in the hearing on Wednesday.

And similar allowances are made for other instances in which the national organization, PPFA, raises funds in the affiliates' area. This is not on an exclusive arrangement with respect to the CFC.

Third: Does Planned Parenthood Federation of America attempt to conceal that the Federation supports the affiliates? The real issue in this proceeding and, of course, the real issue about Planned Parenthood is not the intricacies of accounting with which these hearings have nominally been concerned; it's Planned Parenthood's position on reproductive rights and specifically on the issue of abortion. Planned

Parenthood's financial statement explicitly shows that substantial amounts are spent to support the affiliates.

The fourth question: Does Planned Parenthood attempt to conceal the affiliates, in some instances provide abortion services or abortion counseling? It is simply ludicrous to contend that Planned Parenthood has ever concealed the fact that abortion services are provided at some of the affiliate clinics, about 20 percent, and the counseling which takes place at all the affiliate clinics, or substantially all of them, includes counseling on the availability of abortions. It is equally ludicrous to contend that Planned Parenthood, both PPFA, the applicant organization, and the affiliates, have ever attempted to conceal the fact that they support the proposition that, while as they waddled and said from this platform, no one is in favor of abortions; no one regards abortions as a good answer or the right way to do family planning. But the Planned Parenthood supports the proposition affirmed by the United States Supreme Court and supported by the majority of the American people, that a woman should have the right to a safe abortion if that is her choice.

Planned Parenthood affiliates are, of course, subject to a variety of limitations on the use of Title X and other funds and certain similar restrictions also apply to PPFA's overseas programs. It has been exhaustively demonstrated in repeated audits by a variety of government agencies that both PPFA and the affiliates comply with those rules insofar as they are applicable. It is, however, entirely legal and proper to use private funds and other funds not subject to the special restriction on abortion services -- to the special restrictions for abortion services and counseling and neither PPFA nor its affiliates have ever attempted to conceal the facts in this connection.

Fifth: Is it proper for PPFA to be listed in the CFC under its trademark Planned Parenthood World Population? The answer is certainly yes. The trademark Planned Parenthood World Population is used for a variety of Planned Parenthood fund-raising for overseas efforts. It is used for the CFC because it has acquired a familiarity and recognition in the CFC campaign.

The use of trademarks or common names in the CFC is not limited to Planned Parenthood World Population. In at least two instances, Care and Project Hope are organizations that participate in the CFC under commonly-recognized names, which are not the corporate names of the entities involved, which are respectively the Cooperative for American Relief everywhere and the People to People Health Foundation.

And finally, with respect to last Wednesday's questions before I turn to today's: Are the funds received in response to the fund-raising letter enclosed with your

September 1st notice properly included as public support? The issue for purposes of determining the adequacy of that report is not whether the funds shown as received by the public were tax deductible to the donors, although we believe it is the case that they were, but whether the funds were received from the public.

With respect to this issue of this fund-raising letter, in late 1981 questions were raised about the letter on two grounds: one, that it could be read as restricting contributions and response to it to certain lobbying purposes; and second, that the IRS position is that contributions so restricted would not be tax deductible.

PPFA does not and did not agree that funds received in response to the letter were in fact restricted to lobbying. In fact, all the funds that were received in response to the letter were put into the general funds of PPFA and were not treated as restricted, although it is PPFA's practice, of course, where restrictions are put on grants to follow those restrictions. Nor does PPFA agree, as a matter of law, that even if the funds had been restricted to lobbying, they would be non-deductible, since lobbying of the kind in question is entirely permissible for tax-exempt charities that have made an election under Section 501(h) of the Internal Revenue Code.

However, to avoid any question in the future, Planned Parenthood promptly took steps to ensure that its direct mail materials made explicit that contributions received in response to them were not restricted but were available for all purposes of PPFA.

And since February 1982 the form of letter attached to the September 1st letter has not been used. Great issue has been made of this. There is no question of deception. There is no question of -- there is also no question that the amount is significant. The amount received in response to that letter of 1982 which was not, as far as we are concerned, restricted and non-tax deductible was approximately $78,000. This amount clearly is not material in the context of PPFA's 1982 direct unrestricted public contributions of almost $9 million, $8,750,000 some.

In any event, the issue with respect to the CFC is whether the funds shown are in fact received from the public not whether they are tax-deductible and no question has been raised nor could it be that the funds were so received.

Now I want to turn briefly to some of the issues that were raised this afternoon. Excuse me a moment.

We heard a good deal from Mr. O'Reilly about a good many subjects but I think, if one listened carefully to his statement, as I tried to do, that he acknowledges that Planned Parenthood provided the information which is required and which is required by the accounting profession. He has problems with how the accounting profession and the United States Government define various things, but in any event it is clear that Planned Parenthood has followed the requirement and the regulations. We have not followed requirements that might otherwise be imposed, but we will be happy to follow any requirements which are imposed generally on participants in the organization.

Let me make clear that Planned Parenthood at each level is audited. It is audited in accordance with generally accepted accounting principles at the national level; it is audited in accordance with those same principles as judged by independent accountants in the case of each local affiliate.

In addition, Planned Parenthood is audited repeatedly by government organizations, stimulated to do so because of political controversiality of what Planned Parenthood stands for.

The entity applying to the campaign, as I shall once again say in a few moments in more detail, is PPFA, Planned Parenthood Federation of America. And that organization has been audited and an audited statement for it has been submitted to you. And I will turn in a moment to the allegations that there is some irregularity in that material.

With respect to in-kind contributions, Mr. O'Reilly ran through his experience at OEO in the mid-1960s about OEO grantees. The issue is not how OEO in the 1960s should or should not have accounted for local matching contributions. The issue is whether or not Planned Parenthood in including in-kind contributions in the affiliate data was following generally accepted accounting principles and the standards.

We have submitted an affidavit that it would be improper to exclude those in-kind items and, indeed, the regulations explicitly provide for the inclusion of government in-kind items and it is reasonable to assume that the regulations adopt the rule of the standards that in-kind items are to be included.

As I said in my intervention, there is no question here of valuing voluntary services. The in-kind materials which are reported are either space used for program purposes or supplies and equipment used in carrying out those program purposes.

Finally, a great deal was made of the proposition that some other organizations don't show any in-kind contributions. I assume the reason they don't show any in-kind contributions is that they don't have any or that their accountants conclude that, if they have them, they are unlike those of Planned Parenthood, not of the character which is required to be reported.

Then Mr. O'Reilly presented us with his

recomputations which have only one coherent theme through them, which is that you must either add or subtract enough money from some source on some basis to get one number above 50 percent and the other number above 20 percent.

I don't propose to take your time to go through a line-by-line analysis, but suffice it to say that $13 million very nearly, $12,690,000 is added on to these computations even though it was not paid to or through PPFA but was a United States government grant to the International Planned Parenthood Federation, which is an entirely separate foreign entity.

It is an example of the way in which these -- this approach produces distorted results that, for example, in his computation, which presumably rests on his entity theory, that for reasons which are not entirely clear, but his theory seems to be that IPPF is a part of PPFA. He puts the U.S. government payments to IPPF in with PPFA's figures but he doesn't put everybody else's payments to IPPF in with the totals.

In any case, he manages to get numbers which are only by the slightest margin over the relevant levels.

Now I want to turn -- finally, there is the issue of the state funds. Mr. O'Reilly's position seems to be that, if the United States government makes a grant to a state even in something like Title XX, which is a broad block grant program, that ought to be treated as Federal funds for purposes of these computations. That is not the way they are required to be treated in accounting practice; it is not an accurate description of how the programs work because the disposition of those funds, indeed the very purpose of the block grant programs, is that their disposition should be at the control of the state governments.

And in any event, it is not a requirement which is embodied in the regulations as they now stand.

Finally, there is the question of the other organizations' documentation. Obviously, the opponents have been given a free run of all the other organizations' applications. We have not attempted to examine every other organization's application. But even the --

DR. DEVINE: For the record, that has been available to any member of the public.

MR. SLOCOMBE: All right. We had to get them by a discovery request last year, but I'm glad to know that they are available to any member of the public and we may have occasion to use that right.

Let's look -- our position basically is that a desperate effort is being made to go through and find some omission, some technical error by Planned Parenthood on the basis of which a decision can be made, which is really made because of opposition to Planned Parenthood's programs, but which can be clothed as a technical violation.

I don't for the moment question that, unless you can find a technical violation, you won't exclude it. I think you have reached -- if I may say you reached very properly and you were very correct in making clear the decision last year that, despite your objections to Planned Parenthood's programs, it met the requirements; it met the technical requirements and should be admitted. Because of the court order, you are obligated to perform exactly the same analysis this year. And I believe that, on the basis of all the information that has been presented, you cannot reach any other conclusion than that Planned Parenthood is still qualified.

Let's turn to these four other organizations. First of all, as is obvious from reading the full page rather than a single part of a sentence,eventually under your pressure the whole sentence, we didn't say that the Diabetes Association, the Leukemia Society, the Lung Association and United Way are identical to Planned Parenthood in respect of in-kind contributions. We said they were identical to Planned Parenthood in respect of being a national organization with a variety of local affiliates.

I assume that the reason that these other organizations don't report in-kind contributions is that they don't have any, which at least in many of the instances is plausible because they are not direct service providing organizations. They support research and the like. But I assume the reason they don't report them is they don't have them.

But I also find interesting that, although the regulations are extremely clear in requiring that affiliate organizations be included, United Way of America has submitted a source of funds and cost report, which at least if this is all of it and there isn't a second page -- and there may be a second page -- doesn't include the affiliates. Now I know what would have happened if Planned Parenthood had not included the affiliates. Now perhaps it's on the second page or in a different document for the United Way.

Only the Diabetes Association explicitly states that the affiliates are included. I assume they are included for the other two, but it's impossible to tell from the excerpts that we have been given.

A great deal was made of the particular form in which these audit letters are submitted. I want to call your attention to the fact that the letter for the American Diabetes Association, which is the only one whose source of funds and cost report explicitly includes affiliates, is very carefully limited to the National Headquarters Organization. It is in that respect in exactly the same place as Planned Parenthood.

The notes to financial statement which are attached says, "The Association has affiliated organizations active in furthering the Association in local areas and regions." That is also true of Planned Parenthood. These financial statements are for the National Headquarters only.

Now the Leukemia Association -- the Leukemia Society seems to follow a different practice. I suppose that if you wish to make it a requirement that all the organizations that participate in the CFC get a letter like Ernst and Whinney has provided to the Leukemia Society, which doesn't by the way say that they have all been audited -- as Mr. O'Reilly pointed out, there are middle grounds. If you want to ask us to comply with the middle ground, we will comply with the middle ground. We would have no objection to doing so as long as that were required of other organizations but it's simply not required.

The American Lung Association, all we have is the one-page form certification, and it isn't clear whether that applies to local organizations or not.

The United Way's documentation clearly applies only to United Way of America and not obviously to all of the local United Ways, still less to all the individual local participant organizations in United Way. And I don't suggest that it should, but I do suggest that, unless such a requirement is going to be imposed on these other organizations -- and I believe there are others that are organized on this affiliate basis in the campaign as well -- it is entirely improper and unreasonable to impose it on Planned Parenthood.

Finally, I want to address what insofar as this hearing has had any theme at all has been its theme and is the first question: What is the entity applying to PPFA? We were accused on Wednesday of avoiding the answer to that question. I have since had an opportunity to examine the transcript and it is clear that we answered it on Wednesday, but I will answer it again.

The entity applying is the Planned Parenthood Federation of America, Inc. That is the same organization that has applied and been admitted for the past fourteen years. In applying as the National Headquarters, it is following the practice of a variety of other participants in the CFC and we believe the same standards and the same effort to determine whether or not there might be some better standard, whether or not there is as you examine their information some possible question that comes to mind. That's what is being done to Planned Parenthood; it is not being done to these other organizations.

But PPFA meets all of the technical standards. It meets the 20 percent test. There is no in-kind contributions for PPFA. It meets the 25; it does not meet the 50 percent test but the tests are alternative. It meets the 25 percent test, as I think has not been questioned. Its financial statements are audited in accordance with the standards. There is a minor difference in wording; there is no difference in meaning between the Peat Marwick statement and the statement of all of the other auditing organizations.

It is PPFA which is listed by the National Information Bureau and the Better Business Bureau's Advisory Council on Fund Raising as meeting their standards for integrity and honesty,among others things -- for integrity and honesty in fund-raising material.

The CFC funds which were received go predominantly for the overseas activities of PPFA, as we have explained in detail.

Now there is a claim that there is some confusion. The main basis for that claim of confusion seems to be that Planned Parenthood has local affiliates. The information about the local affiliates is required by the regulations and indeed it is explicitly contemplated and provided for in the regulations that many of the organizations will be quote "national in scope with a national organization that provides services in localities through local affiliates". That's Section 950.301 of the regulations. There is nothing unusual; there is nothing confusing generating about there being affiliates.

Now last year OPM claimed that Planned Parenthood should be judged as a domestic organization and it is true that if it is judged as a domestic organization, the activities of the affiliates are highly relevant, just as is the case with the other groups which have a national headquarters and local charters. If the question is: What entity is applying, the answer is PPFA.

PPIA is a program of PPFA, which is included in the funds reports. IPPF is an entirely separate foreign corporation. We have, in fact, given you, although we don't believe it is required and we would be surprised if in fact you have required that the other ISAs submit detailed financial reports on all of their grantees -- we have provided you with a report from IPPF. It is not a part of PPFA and there is no reasonable basis for contending that it is.

In short, we meet all the technical standards. We have heard this afternoon masses of speculation about what should be required, a lot of abuse of Planned Parenthood's programs, and we have heard an effort to find some excuse to keep Planned Parenthood out.

I hope that you will not succumb to that effort to make you desperately find a spurious technical ground. The same rules should apply to everyone and the same rules should be consistently applied. The same technical standards as are in effect this year were in effect last year and in 1981 when you admitted Planned Parenthood after a careful review.

Virtually every one of these questions could be raised equally with respect to applicants or participants, charities you have already approved in one respect or another for the CFC. We are faced instead of a hearing limited to nine precisely defined questions, an ever-widening range of charges, mostly based ultimately on objections to Planned Parenthood's programs.

We have responded to each of those technical questions. The issue here is whether Planned Parenthood will be admitted despite the objections that you and other people have in the greatest sincerity to the content of its views and its advocacy of them. But in basing Planned Parenthood's ability to participate in the campaign on your view or anybody else's view of its programs or of its advocacy is not only wrong but explicitly prohibited by the court order of July 26th.

And finally, I want to appeal to you for a prompt decision. Delay is already risking a de facto exclusion. We understand that your decisions on the appeals by other organizations and other final refinements of the list of participant organizations -- your decisions have been made and that an announcement of those decisions will be transmitted to the field imminently, whether this afternoon or on Monday. I don't know.

We know that local decisions are being made in the local communities. We believe we are entitled as a matter of law and of justice to a favorable ruling admitting us and admitting us as an ISA. In any event, we urgently request a prompt decision so that Planned Parenthood can do what it wishes to do, that is to participate freely in the campaign so that Federal employees can, if they wish, make contributions to it, but that in any event we do not face the situation in which a delay in decision is the equivalent to denial.

I would be glad to address questions, but that concludes my statement.

DR. DEVINE: No, I have no further questions. Thank you.

This hearing is adjourned.

(Whereupon, at 3:25 p.m., the hearing was adjourned.)

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Appendix 10

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED
SEP 14 1983
JAMES F. DAVEY, Clerk

PLANNED PARENTHOOD FEDERATION OF AMERICA, INC., et al.,

Plaintiffs,

v.

THE HONORABLE DONALD J. DEVINE,

Defendant.

Civil Action No. 83-2118

ORDER

This matter comes before the Court pursuant to the motion of plaintiff, Planned Parenthood Federation of America, Inc. (Planned Parenthood) for an order to implement this Court's Order of July 26, 1983 which approved the agreement of the parties that Donald J. Devine, Director, Office of Personnel Management, his agents and subordinates

> will not exclude plaintiffs Planned Parenthood Federation of America, Inc., and Native American Rights Fund from participation in the Combined Federal Campaign with respect to the solicitation of "designated contributions," as that term is used in the Memorandum Opinion filed July 15, 1983 in NAACP Legal Defense and Educational Fund, Inc., et al. v. Donald J. Devine * * * on the basis of the provisions of section (2)(b)(1 through 3) of Executive Order No. 12353, as amended by section 1(b) of Executive Order No. 12404 of February 10, 1983.

From the record and argument of counsel it appears that Planned Parenthood is the sole remaining agency whose application for national eligibility for participation in the Combined

Federal Campaign (CFC) has been neither approved nor rejected due to the failure of the defendant Devine to make such determination. The defendant had designated and utilized September 9, 1983 as the latest date for such decision as to all other agencies seeking like participation, in order to afford the rejected agencies time within which to appeal that rejection. Time is crucial in this cause since Director Devine has ordered that after Monday, September 19, 1983, the approximately 550 local committees across the nation may finalize local participant lists for inclusion in printed brochures to be made avilable to potential donors.

Planned Parenthood, unlike any other applicant agency, has been the target of scrutiny and investigation, purporting to concern unidentified "technical" objections to its eligibility. On August 29 Planned Parenthood received the first of a series of questions concerning its application; Planned Parenthood responded to those questions on August 31. The initial round of inquiries was followed by the National Eligibility Committee hearing at which opponents of Planned Parenthood attacked the substance of Planned Parenthood's programs and views. On September 1, the Director required further inquiry as to whether Planned Parenthood would be admitted, due to what defendant referred to as "potentially disturbing evidence that the group has not met the CFC's financial and reporting requirements."

Devine stated that "[t]hat evidence was presented by pro-life representatives during the National Eligibility Committee hearing yesterday." The parties agree that opposition to Planned Parenthood has come essentially from pro-life groups. The hearing continued on September 2; yet more questions were addressed to this agency; yet more answers were given. Despite Planned Parenthood's prompt response to each round of inquiries, defendant has yet to rule on the application. Needless to say, the plaintiffs' appeal rights in the event of a negative decision have been seriously eroded already and will vanish completely unless immediate action is taken. The time pressure exists even in the event of a decision favorable to Planned Parenthood, in light of the delays in communicating any result to the many local campaigns before they finalize participant lists on Monday.

It cannot be overlooked that Planned Parenthood has participated in the CFC each year since 1968 and in 1981 and 1982 was granted national eligibility by defendant Devine. Throughout the prolonged investigation of Planned Parenthood, defendant has stated no specific reason for the extra attention now focused on this agency, aside from the suggestions, without noted evidence supporting them, that financial problems exist and that this is a "controversial" agency. At the eligibility hearing on September 2 defendant stated his own views of Planned Parenthood as follows:

> Everybody knows where I [Director Devine] stand in regard to the kind of practices that Planned Parenthood does. You promote abortions; I think that's detestible. I think in a just world, you'd have nothing to do with a charitable drive.

Indeed, the controversial nature of this organization and the vocal opposition of pro-life groups appear to be either the primary factor delaying a decision, or a paramount consideration in that delayed decision.

Defendant's failure to resolve this matter, despite ample opportunity to do so, and the erosion of time in which to appeal a rejection or notify local campaigns of national eligibility in the event that the application is eventually accepted, amounts to a denial of Planned Parenthood's opportunity to participate in the CFC and is a direct limitation of the Court's Order in this regard.

The Court is not oblivious to the sensitive and sincere positions of the parties, but the controversial nature of the decision cannot obviate the necessity for a fair and equitable decision. All applicants, including Planned Parenthood, must be afforded an equal opportunity to be accepted or rejected, on a reasoned basis, as a national voluntary agency eligible to participate in the CFC.

It is therefore

ORDERED that should the defendant, Donald J. Devine, fail to issue a decision, supported by cogent reasons, resolving Planned Parenthood's application for admittance to the 1983 Combined Federal Campaign by 3:00 p.m., on September 14, 1983, Planned Parenthood shall, automatically and without further order of this Court, be declared to be a national voluntary agency approved for participation in the 1983 Combined Federal Campaign, and this shall be promptly communicated to all local committees nationwide.

JOYCE HENS GREEN
United States District Judge

September 14, 1983

APPENDIX 11

UNITED STATES
OFFICE OF PERSONNEL MANAGEMENT
WASHINGTON, D.C. 20415

ffice of the Director

September 14, 1983

Ms. Faye Wattleton
President
Planned Parenthood Federation
of America, Inc.
800 Seventh Avenue
New York, New York 10019

Dear Ms. Wattleton:

Pending before me is the matter of the application of Planned Parenthood-World Population for national eligibility to participate in the 1983 Combined Federal Campaign (CFC). A voluminous record, including the transcript of a hearing held before me in sessions spread over three separate days, has been compiled. Constraints of time, made all the more severe by an order of the United States District Court for the District of Columbia effectively requiring me to decide this matter by 3:00 p.m. today, have made it impossible for me to set out a full statement and discussion of all the relevant issues and bases for decision. This conduct of the applicant--first in pressing for delay in my decisional process so as to permit its development of a fuller record, then in demanding my decision on an unreasonably short timetable--has not been helpful. This letter, then, embodies less than the fullest and ripest treatment of the issues that I would have preferred. However, to preserve the integrity of the administrative process, and to show that the Executive Branch is cognizant of its duty to act, this letter shall stand as the decision of the Director of the United States Office of Personnel Management (OPM) on the pending application.

I. IS ANY DECISION TO EXCLUDE PLANNED PARENTHOOD BIASED?

It has been argued, based upon the Director's personal views regarding the abortion practices supported by Planned Parenthood, that this bias should not allow him to deny application by that organization into the 1983 CFC, especially since Planned Parenthood has been in the CFC for over a decade. The matter of the past practice is not relevant here, for earlier eligibility criteria were vague, and codified neither in regulations nor in official memoranda before this Administration reformed the CFC by making criteria rational and available to all interested parties. In addition, the decisions to admit Planned Parenthood to the CFC in the past two years were made in both instances with explicit reservations from OPM to issues similar to those raised here. Questions were raised of a serious enough nature during last year's admittance process for the National Eligibility Committee to demand an audit, which was announced by the Director when eligibility was granted. Furthermore, with due notice to all parties, the requirements for national eligibility in the Campaign have changed during this period of time.

The Director of OPM is given the responsibility to make all eligibility decisions for the CFC. He cannot avoid that obligation. The Director must make such decisions, irrespective of his personal preferences on the basis of the applicable regulations. To say that the Director must refrain, in the event that he harbors a personal dislike for an organization, from disqualifying it if it fails to satisfy the established eligibility criteria, is to create a perverse Constitutional theory. It suggests that an additional way for an otherwise non-qualifying agency to gain admittance under governmental regulatory standards is to support the election and appointment of public officials who are opposed to their policies and programs. Obviously, this theory makes no sense.

Human beings have values, and those values bias them to some degree in their activities. All a conscientious public official can do is to exclude biases as much as possible in making decisions. The fact of the matter is that the same criteria reviewed, infra, for Planned Parenthood have resulted in the exclusion of other applying agencies from the CFC. Indeed, almost 20 percent of all applications for 1983 CFC were rejected and virtually all were rejected for these and related reasons. These same criteria must be applied to Planned Parenthood as well.

II. IS PLANNED PARENTHOOD "SINGLED-OUT"?

Eligibility into the CFC rests on three levels of review. First, the OPM staff do a review of the applications against the requirements in the regulations. Second, because staff resources are not unlimited, a National Eligibility Committee is established from among Federal employees and union representatives, before which the public is requested to give comments regarding the applications by agencies to join the CFC. When either the staff or the public review process indicates problems, a third review is undertaken by the Director personally. He reviews the facts and makes the final determination on eligibility, as measured against the regulatory criteria.

The National Eligibility Committee part of the process asks the public to help the Director in reviewing eligibility. It relies upon public scrutiny as a means by which to evaluate conformance with the governing regulations. This is an important part of the review process, for it allows public scrutiny to go behind the paper record which is reviewed by the staff. The National Eligibility Committee meetings are announced to the public and any employee or outside party is allowed to testify.

The fact of the matter is that questions concerning the eligibility of Planned Parenthood have been raised at each of the meetings for the past several years. This year, the only application which was questioned by the public was the one by Planned Parenthood. Any decision-maker would be forced to pay particular attention to Planned Parenthood given the public questions which have been raised regarding its eligibility.

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Last year, Planned Parenthood was admitted to the campaign under questions regarding its eligibility for the CFC. Indeed, the Director's pronounced concern for insulating administration of the CFC from any putative personal bias led him to lean toward Planned Parenthood's admission to the Campaign, even though the questions raised were serious enough for him to request an audit. Despite repeated urgings for an extensive audit, OPM staff performed an audit which merely reconciled financial statements to the summary statement, the "Sources of Funds and Costs Report." At the hearing this year, the adequacy of that review was questioned. This public criticism of OPM was justified. Therefore, it became even more important to have a close review by the staff, by the National Eligibility Committee, and by the Director.

After staff review and a long hearing by the National Eligibility Committee, an administrative hearing was held, convening on three separate days, to review the application in the most comprehensive manner. The Director personally presided over all three sessions and has personally reviewed all relevant material.

III. THE BURDEN OF PROOF

One of those opposing the admission of Planned Parenthood has argued that the applicant has the burden of proof to show that they meet the eligibility requirements for the Campaign (hearing II, transcript page, 89). See 5 C.F.R. §950.101(a)(i)(ii)). The Government's position is that it has not created an unlimited public forum (whether or not the CFC is a public forum at all), and therefore the Government can apply criteria for admission to the CFC. It is the obligation of the applicant to submit the information. However, it is clear that the Government may not exclude an applicant to the campaign on arbitrary, capricious, invidiously dicriminatory, or unequally applied grounds. In the final evaluation, the decision must be weighed against the regulatory criteria, given the data available. The real burden is upon the decision-maker, in this case the Director, to determine whether the applicant has met the criteria for admission to the Campaign after all evidence has been weighed and the reasons for the decision communicated. Throughout, the Director is necessarily aware that his actions will undoubtedly be reviewed by a court of law.

IV. SHOULD PLANNED PARENTHOOD BE GRANTED PRESUMPTIVE ELIGIBILITY FOR THE CAMPAIGN?

If an organization has had a reputation for being especially forthcoming, its representations should be given great weight. The fact of the matter is that Planned Parenthood has not met that standard. The administrative record reveals instances of what Planned Parenthood's critics call "deceptive practices," forbidden under 5 C.F.R. §950.405(a)(5). Testimony reveals that Planned Parenthood sent a public appeal letter, the postscript of which reads, "Your contribution in support of Planned Parenthood's efforts to stop the Human Life Amendment is tax deductible." This is conceded by Planned Parenthood's attorney (9/7/83 tr.,p. 37). However, he claims that the letter questioned was relevant to last year's application, but not to this year's application since it concerned a 1981 direct mail fundraising letter (Id. at 35). Yet, it was claimed in testimony, and then not contradicted in cross-examination or argument by Planned Parenthood's attorney, that the practice actually was not ended until sometime during 1982 (Id. at 99). Planned Parenthood's lack of candor on this matter is important, since these funds were counted under "public support," a category essential for evaluating eligibility for participation in the Campaign. Planned Parenthood has said that it has now taken the steps to see that this will not happen in the future; but their lack of candor regarding whether these activities were practiced in 1982, the year relevant for the application, is troubling.

Planned Parenthood, through its attorney, claimed that "we didn't receive funds which were not tax deductible," (Id. at 34). Upon cross-examination, this was elaborated upon regarding the Human Life Amendment solicitation and the Internal Revenue Service opinion that it was not tax deductible by adding: "It is, of course, the fact that revenue rulings do not state the law, they state the position of the Internal Revenue Service," (Id. at 35). Although Planned Parenthood claimed that a "substantial legal argument" could be made for their legal position, the fact is that the Internal Revenue Service opinion must be relied upon by other public officials until proper legal proceedings void that opinion. The IRS decision is "the law" until otherwise decided. At a minimum, the absolute statement made by Planned Parenthood, on several occasions, that they did not receive funds which were not tax-deductible was less than forthright. Again, this becomes critical since questions regarding tax deductibility are important in deciding the nature of organizations eligible for the CFC, in determining "public support" under the regulations, and when deciding whether these funds should be segregated, as required by audit standards, since they were not so restricted by Planned Parenthood (Id. at 38).

Planned Parenthood has also been less than forthcoming regarding precisely what it does regarding abortion. The question here is not whether one agrees with the practice of abortion, but the claims an organization holds out to the public in representing what it does. It is a requirement of the regulations that an organization's programs are clearly identified and explained. An August 7, 1980 memorandum (only made public during the present eligibility process) from Faye Wattleton, President of Planned Parenthood, to Richard J. Leary of the International Services Agencies read, in part, that: "It may be assumed that some of the ISA/CFC funds raised by PP-WP (Planned Parenthood-World Population) indirectly support abortion-related activities overseas;" and further that, "Thus it may be assumed that some of ISA/CFC funds raised by PP-WP indirectly support abortion-related activities in the United States," (see att. #1). Yet, on April 13, 1981 Ms. Wattleton wrote OPM that "It may interest you to know that no PP-WP funds from any source are currently being used to provide abortion services in our international program" (see att. #2). But on November 10, 1981, Ms. Wattleton wrote the Comptroller General of the United States that: "No Planned Parenthood affiliate or clinic promotes abortion with or without public funds. The thirty-seven

Planned Parenthood affiliates that provide abortions do so with private revenues and with state public funds in the thirteen states that allow reimbursements for abortions for indigent women." (see att. #3).

Each of these three cases raises important questions regarding whether Planned Parenthood holds itself out to the public in a truthful manner. Whether or not these different statements may be reconciled in some subtle and as yet undisclosed manner, these statements are less than forthcoming, create public doubt as to what services are provided by Planned Parenthood, counts tax deductible contributions as "public support," and raise serious questions regarding whether Planned Parenthood meets the regulatory rule that a participating agency "ensures that its publicity and promotional activities are based upon its actual programs and operations, are truthful and nondeceptive, and include all material facts," (5 C.F.R. §950.405(a)(5)).

V. WHO IS APPLYING TO THE COMBINED FEDERAL CAMPAIGN?

After several questions posed to Planned Parenthood in writing, and several questions asked during the hearing, we still do not know precisely what entity is applying for admission to the CFC. In answer to the specific question, OPM was informed that "Planned Parenthood Federation of America, Inc. under its trademark Planned Parenthood-World Population is the organization which has participated in the CFC each year since 1968," (answer to question 1, 9/7/83 tr.,p. 7, tr.,p. 23, etc.). Thus, Planned Parenthood says who has participated, but not who is applying for admission this year. Planned Parenthood claims it is not "entirely clear, whether Planned Parenthood Federation of America or Planned Parenthood Federation of America and its affiliates" should be the organization admitted to the Campaign under the regulations (Id. at 7).

Planned Parenthood holds that it submits a combined statement because OPM's regulations require a consolidated report. It argues further that its definition of "affiliates" should not count state affiliates, since they are not charitable organizations under 26 U.S.C. §501(c)(3) (9/7/83 tr., p. 67). Likewise, they argue that another organization using the Planned Parenthood trademark, International Planned Parenthood Federation, should not be included under the consolidated organization. Planned Parenthood claims, however, that an organization not using the Planned Parenthood trademark should be included, under "affiliates," the Alan Guttmacher Institute. A "division," the Family Planning International Assistance program, should also be included (Id. at 61-2, 68).

Besides the confusing array of Planned Parenthood "affiliates," we have the disturbing matter that the Planned Parenthood trademark, "Planned Parenthood-World Population," cannot be identified by Planned Parenthood in terms of its scope of activity (Id. at 39), although the Standards for Accounting and Financial Reporting for Voluntary Health and Welfare Organizations ("Standards") require that the scope of programs be specified. Even given that "Planned Parenthood Federation of America, Inc., under its trademark Planned Parenthood

World Population, is the organization which has participated in the CFC each year since 1968," (Id. at 7), Planned Parenthood admits that the PP-WP trademark "is certainly not used in all the activities of Planned Parenthood Federation of America, but it is used in some" (Id. at 46). When pressed further on the scope of PP/WP activities, the attorney representing Planned Parenthood said that, "I have answered the question" (Id. at 48). No further information was submitted by letter after the hearing, although other information has been submitted by counsel.

The vagueness regarding which entity of Planned Parenthood is seeking admission to the Campaign is further confounded by the fact that Planned Parenthood claims both that its affiliates are "largely autonomous" (Id. at 7) and that they also meet the requirements of the CFC regulations that they be under "close supervision" of the parent organization (Id. at 42).

After exhaustive study, I find the record does not disclose which entity is requesting admission to the CFC. The best presumption is that Planned Parenthood requests admission for Planned Parenthood Federation of America, Inc., the national organization, and its non-State, local affiliates, including the Alan Guttmacher Institute and the Family Planning International Assistance program, but not the State Planned Parenthood affiliates or International Planned Parenthood Federation. And, whichever entity is claimed for admission, apparently it should be admitted, not as Planned Parenthood Federation of America but as Planned Parenthood-World Population.

VI. DOES PLANNED PARENTHOOD MEET THE 50/20 REQUIREMENT?

Clearly, the answer to whether Planned Parenthood received at least 50 percent support from non-Federal Government funds, or received at least 20 percent of its funding from the public (5 C.F.R. §950.405(a)(2)), depends upon which entity is being evaluated.

If International Planned Parenthood Federation is included as part of the consolidated entity which requests admission to the CFC, it is questionable whether the 50/20 criterion is met. Since the amount of non-tax deductible funds involved is in dispute, it is not possible to know whether Planned Parenthood Federation of America, Inc. would meet the 20 percent "public funding" requirement and, when coupled with the fact that the national office, Planned Parenthood Federation of America, Inc.,does not meet the 50 percent requirement on the face of its own submission, (att. #5) it is not clear whether this entity meets the 50/20 criterion. If one includes the State organizations within the entity, "Planned Parenthood" does not qualify, because the regulations require that any entity admitted to the Campaign be a charity as defined under 26 U.S.C. 501(c)(3). Again, if one includes only the Family Planning International Assistance program, a primary recipient of funds and the only overseas recipient of funds which is tax deductible, as the entity for admission to the Campaign, the 50/20 requirement clearly is not met (att. #6). In short, since the scope of Planned Parenthood-World Population cannot be identified, it cannot be evaluated against the 50/20 criterion.

The only way in which it is arguably the case that "Planned Parenthood" meets the 50/20 percent requirement is to include precisely the "affiliates" most stressed by Planned Parenthood as appropriate affiliates (although not clearly so stated) -- Planned Parenthood Federation of America, Inc., the Alan Guttmacher Institute, and the non-State, local affiliates of Planned Parenthood Federation of America, Inc. In this constructed entity, the local affiliates dominate as the predominant part of the organization, with total public support and revenue reported at only $34 million for the national headquarters, but $166 million for the "affiliates." (att. #5).

VII. DOES THE PPFA/NON-STATE, LOCAL AFFILIATE "PLANNED PARENTHOOD" ENTITY MEET THE REQUIREMENTS FOR ENTRY INTO THE CFC?

All of the financial and fiduciary requirements for entry into the CFC fundamentally rest upon the Standards used for charitable organizations to meet essential auditing criteria (5 C.F.R. §950.405 (a)(3)). Fidelity to these Standards, in turn, is relied upon by the Office of Personnel Management through certification by the applicant agency. OPM agrees with the Planned Parenthood counsel that technical questions regarding precise language and proper signatures should not be the determining factor. It is without question that neither the national nor local affiliate data submitted by Planned Parenthood are certified in accordance with the precise form set by the regulations. The issue here, however, is whether the substance of the Standards required to be met by an eligible charity in the CFC is followed by the local affiliates considered as the entity most favorable to Planned Parenthood's application for eligibility to the CFC.

When asked under questioning whether in fact these affiliates were not audited under the Standards, this was twice denied in testimony by counsel for the Planned Parenthood (9/7/83 tr.,p. 24). Upon being confronted with its own statement that the local affiliates are audited in accordance with the Guide for Audit of Voluntary Health and Welfare Organizations, and not the Standards required by the regulations, Planned Parenthood's attorney admitted these were not "identical" but only "substantially" the same (Id. at 26). Planned Parenthood claims that this situation "applies equally well to every charity in America" (Id. at 25).

This is, in fact, not the case for most CFC charities and, in any event, it is a requirement of the CFC that all applicants be audited under the Standards. Many other agencies this year were denied admittance for not complying with this requirement. It is true that to the layman both the Audit Guide and the Standards appear similar. But they are quite different on essential auditing criteria. Critically, they differ on how the expenses for fundraising and "education" are allocated, a question here raised regarding the Wattleton letter soliciting funds opposing the Human Life Amendment. (See att. #4). This distinction is also critical on the question of allocating expenses to different program areas, such as is raised by the "entity" question, and the distribution of funds issue relating to the Family Planning International Assistance program and International Planned Parenthood Federation. It is important too on the question regarding whether funds may be contributed to non-tax deductible organizations like International Planned Parenthood Federation and remain tax deductible itself. Finally, under both the Standards and the Audit Guide, funds raised for lobbying should be reported separately from all other funds, which was not done in the situation reported above.

The subtleties of the auditing profession make significant differences in the examples used in the Standards relative to those in the Audit guide. These examples are so serious that State regulatory agencies vehemently support the Standards over the guide as a means to protect better the public against charitable fraud (cf. Philanthropy Monthly, January, 1983, p. 8). Since each of the questions raised under the Standards issue are extremely relevant to criteria necessary for admission to the CFC, the fact that the Standards were not followed becomes a bar to eligibility for the Combined Federal Campaign.

Consequently, the entity "Planned Parenthood Federation of America/non-State, local affiliates" does not meet the most fundamental requirement of the Campaign, i.e., that its audits be certified under the Standards. Even the affidavit of Kenneth M. Fischer, partner in the accounting firm of Peat, Marwick, Mitchell and Company, submitted by Planned Parenthood, makes clear that only "in most cases" will the Audit Guide and the Standards be the same. All the other representations made in the affidavit are similarly qualified. The Government does not have assurance that even this "entity" meets the Standards requirements for admission into the Combined Federal Campaign.

VIII. DECISION

Even accepting the definition of entity that is most favorable to Planned Parenthood, and setting aside serious questions of conflicting data and misleading representations, one must conclude that Planned Parenthood is not eligible to participate in the Combined Federal Campaign. The Government has no assurance that the Standards required for admittance into the Campaign have been met by affiliates; indeed even the national organization, the Planned Parenthood Federation of America, Inc. fails to certify its compliance with the Standards. The entity, Planned Parenthood-World Population, remains unidentified. In similar situations with other applicants, national eligibility to the CFC was denied. No cause has been shown here as to why unequal treatment of Planned Parenthood is warranted.

This letter shall be your notice that your application for admission to the CFC has been denied. As provided in the regulations, you have ten days to request reconsideration of this decision and to present further information in support of your request. See 5 C.F.R. §950.407(e) and 48 Federal Register 34914 (Aug. 1, 1983). In the event that you do not apply on or before September 26, 1983, for reconsideration of this decision, then it shall be the final determination of OPM for the 1983 Combined Federal Campaign.

Sincerely,

Issued at September 14, 1983
2:40 P.M., E.D.T.

Donald J. Devine
Director

APPENDIX 12

LAW OFFICES
CAPLIN & DRYSDALE
CHARTERED
1101 SEVENTEENTH STREET, N.W.
WASHINGTON, D.C. 20036
(202) 862-5000

September 15, 1983

The Honorable Donald J. Devine
U.S. Office of Personnel Management
1900 E Street, N.W.
Washington, D.C. 20315

Dear Dr. Devine:

This letter constitutes Planned Parenthood's request that you reconsider and reverse your decision of September 14, 1983, refusing to admit Planned Parenthood to the 1983 CFC. We are filing this appeal so as to fully exhaust all administrative remedies. However, given the fact that local committees are now making final decisions and preparing to print materials, if your decision is not reversed we must seek judicial remedies promptly to have any hope they can be effective. Accordingly, we have, with the agreement of your General Counsel, Mr. Morris, asked Judge Joyce Green for a hearing at 4:00 p.m. this afternoon at which time we will, if your decision still stands, ask for appropriate judicial relief.

We agree that Planned Parenthood must meet the eligibility standards (other than those barred by the July 26 order) that apply to others, but by filing this appeal, we do not waive our procedural objections to the extraordinary inquiry to which Planned Parenthood has been subjected.

* * * *

The decision letter addresses seven questions in sections I through VII before finally stating the decision in section VIII. The first three sections -- on bias, "singling out," and burden of proof -- argue general issues that may be relevant to a judicial review of an exclusion but do not purport to state specific reasons for excluding Planned Parenthood. The contentions of the remaining sections are addressed in turn.

IV. Should Planned Parenthood Be Granted Presumptive Eligibility for the Campaign?

Despite its title, this section basically contends that Planned Parenthood has, in two stated respects, engaged in "deception practices." In each instance, the claim is untrue.

a. The fund raising letter. Your discussion of "lack of candor in this matter" simply ignores the statement submitted at the September 9 hearing, both orally and in writing, fully explaining this matter. The material was submitted at the September 9 hearing because the question was not among those included in the supposedly complete list to be addressed at the September 7 hearing. The facts, as fully set forth then, are these:

In late 1981, questions were raised about the fund-raising letter in question on the grounds that the letter could be read as restricting contributions in response to it to lobbying purposes and that the IRS position is that contributions so restricted would not be tax deductible. PPFA does not agree that funds received in response to that letter were restricted to lobbying and did not in fact treat them as restricted. All funds received in response to that letter were put into general funds of PPFA. Therefore, these contributions were not restricted to lobbying and the question of the tax effect if they had been so restricted does not arise.

PPFA does not, however, agree that if funds received had been restricted to lobbying they would have been non-deductible. Contrary to the statements in your leteter, there is no impropriety in maintaining that an IRS revenue ruling "is merely the opinion of a lawyer in an agency." Stubbs, Overbeck & Assoc. v. United States, 445 F.2d 1142 (5th Cir. 1971); Lang's Est. v. CIR, 64 T.C. 404, 407 (1975) ("simply the contention of one of the parties to the litigation, and ... entitled to no greater weight").

The position stated in the Revenue Ruling has never been tested in court; and Revenue Ruling positions are frequently not accepted by courts. There are indeed serious legal arguments against the IRS position. Lobbying of the kind in question is entirely permissible for tax exempt charities under section 501(h) of the Internal Revenue Code. Contributions for a proper, though restricted, charitable purpose are, in general, as deductible as general purpose gifts. "Direct" lobbying expenditures are deductible by tax-paying businesses under section 162(e) of the Tax Code, so a stricter rule for charities is vulnerable to attack on equal protection grounds. In any event, the IRS position depends on the funds received actually being "earmarked," which was not the case here, so it is not at all clear the Ruling is even applicable.

However, like most sensible people, Planned Parenthood decided that it did not want to risk tax difficulty over a minor point, even if it had a sound legal case, and so, to avoid any question in the future, Planned Parenthood took steps to ensure that in the future its direct mail materials make explicit that contributions received in response to them were not restricted to lobbying or any other particular activity described in the fund raising letter, but were available for all purposes of PPFA. That action was taken within weeks of the question being raised, and after February, 1982, the form of letter attached to the September 1 letter has not been used, and all Planned Parenthood fund-raising materials have made clear that, whether or not specific programs are mentioned in a particular letter, gifts in response to them are available for all purposes of Planned Parenthood.

Further, the amounts involved are far too small to affect the public support computation. The amount received in response to that letter in 1982 was approximately $78,000. This amount is not material in the context of PPFA's 1982 direct unrestricted public contributions of $8,750,000 and total public support of over $11,000,000.

Most important, this whole arcane debate about the deductibility of a small part of Planned Parenthood's contributions is irrelevant to the CFC. It is entirely proper for charities to receive contributions that are for one reason or another not deductible to the donors as charitable contributions. The issue in connection with the 20% public support test for the CFC is whether the funds shown are in fact received from the public, not whether they are tax deductible, and no question has been raised -- nor could it be -- that the funds are so received.

The attempt to twist Planned Parenthood's reasonable prudence in ceasing a perfectly defensible fund-raising practice to minimize future tax controversy cannot properly be described as "less than forthright."

(b) The abortion issue. The three quotations you cite come in very different contexts; they are separated by 15 months and the most recent was in November 1981. They are in any event entirely consistent with each other, and indeed demonstrate that Planned Parenthood has been both explicit about its stand on abortion and scrupulous in observing the limitations placed on it with respect to funds from certain sources. The first of these statements, in August 1980, states clearly the fact you say Planned Parenthood conceals: That since CFC gifts to Planned Parenthood support the work of Planned Parenthood as a whole, the necessary consequence is that those funds "indirectly support abortion-related activities." The second statement, in April 1981 (in a letter to an OPM official in files you reviewed which you never questioned at the time or since) simply states a fact: No Planned Parenthood funds were in April 1981 used "to provide abortion services in our international program." The reason for this is that, as the August 1980 letter states, "Neither FPIA nor IPPF [the two recipients of Planned Parenthood's funding for overseas programs] provide abortion services or any other direct medical service." Finally, the third statement states what is also true -- that no Planned Parenthood clinic "promotes" abortion, though some provide abortion services, i.e., they make available a service that a woman has a right to choose if she wants, but they do not encourage that choice. Still less do they encourage failure to use contraceptive measures because abortion will be available if an unwanted pregnancy results.

Far from being "subtle and undisclosed" and "less than forthcoming," these statements are consistent with each other and with Planned Parenthood's basic policy on the immensely difficult and emotion-laden issue of abortion:

1. Planned Parenthood does not promote abortions as a method of family planning -- indeed, the vast bulk of its efforts, which are equally vigorously attacked by many critics -- are directed at making available the contraceptive measures that are far better methods of family planning.

2. Planned Parenthood complies with all abortion-related restrictions on public funds.

3. Planned Parenthood does, however, maintain that a woman, faced with an unwanted pregnancy should be able to choose a safe abortion; and

4. Some Planned Parenthood clinics use private and non-restricted public funds to provide abortion services and the Planned Parenthood effort in general supports and protects the availability of such services.

Only a blind refusal to acknowledge the complexity of this issue -- and the rights of others who do not agree that everything to do with abortion is undifferentiatedly evil can twist these statements into lack of candor.

Finally, in this "deception" connection, Planned Parenthood maintains that it, like other groups, should be judged on the basis of its overall record, not isolated statements taken out of context.[1] The two leading groups that monitor the integrity of U.S. charities are the Better Business Bureau's Advisory Council and the National Information Bureau. Each has listed Planned Parenthood Federation of America as meeting their requirements, which include honest publicity. We submit that these ratings by neutral (and far from uncritical) expert observers, based on the totality of Planned Parenthood's publicity and fund-raising, not the two incidents you focus on, are the appropriate measure of the integrity of Planned Parenthood's fund raising and publicity.

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[1] At least one other applicant, the Moral Majority Foundation, has been accepted despite information submitted to you that it has used fund-raising letters which, by saying that contributions for electoral purposes are tax-deductible, clearly misstates the tax effects of the gifts they seek. (Exhibit A)

V. Who is Applying to the Combined Federal Campaign?

Contrary to your claim, Planned Parenthood has been absolutely direct about what entity is applying.[2] To take only the last time we made the point, I refer you to the statement of pages 75-77 of the transcript of the September 9 hearing:

> Finally, I want to address what insofar as this hearing has had any theme at all has been its theme and is the first question: What is the entity applying to PPFA? We were accused on Wednesday of avoiding the answer to that question. I have since had an opportunity to examine the transcript and it is clear that we answered it on Wednesday, but I will answer it again.
>
> The entity applying is the Planned Parenthood Federation of America, Inc. that is the same organization that has applied and been admitted for the past fourteen years. In applying as the National Headquarters, it is following the practice of a variety of other participants in the CFC ...
>
> Now there is a claim that there is some confusion. The main basis for that claim of

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[2] Last year, you yourself clearly and correctly stated the situation: "It is important at the outset, I think, that I make it clear that the voluntary agency that has been admitted to the current Combined Federal Campaign (CFC) is actually the legal entity, the Planned Parenthood Federation of America, Inc. ("PPF of A")." Letter of August 2, 1982 to W. Slocombe and G.J. Vitt. Exhibit B.

> confusion seems to be that Planned Parenthood has local affiliates. The information about the local affiliates is required by the regulations and indeed it is explicitly contemplated and provided for in the regulations that many of the organizations will be quote "national in scope with a national organization that provides services in localities through local affiliates." That's Section 950.301 of the regulations. There is nothing unusual; there is nothing confus[ion]-generating about there being affiliates.
>
> Now last year OPM claimed that Planned Parenthood should be judged as a domestic organization and it is true that if it is judged as a domestic organization, the activities of the affiliates are highly relevant, just as is the case with the other groups which have a national headquarters and local charters [chapters]. If the question is: What entity is applying, the answer is PPFA.
>
> PPIA is a program of PPFA, which is included in the funds reports. IPPF is an entirely separate foreign corporation ... It is not a part of PPFA and there is no reasonable basis for contending that it is.

Thus, Planned Parenthood has been absolutely clear what its structure is, and what entity is applying.[3]

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[3] You say (p. 5), "Planned Parenthood claims it is not 'entirely clear, whether Planned Parenthood Federation of America or Planned Parenthood Federation of America and its affiliates' should be the organization admitted to the Campaign under the regulations." This selective quotation grossly distorts the Planned Parenthood statement; the full sentence reads (Sept. 7 Tr. p. 7):

> The regulations are not, however, entirely clear as to whether the technical requirements of the so-called 50 or 20 percent test are to be applied only to national organizations or are to include the affiliates as well.

There is, therefore, no basis for your supposed confusion about which entities are to be included. You raise six issues:

(1) Family Planning International Assistance (FPIA). FPIA -- an overseas program of PPFA largely funded by AID -- is an integral part of PPFA. As such it and its finances are included as a part of PPFA.

(2) The "state" affiliates. These are separate "section 501(c)(4)" organizations formed to conduct -- with nondeductible funds -- lobbying activities which may go beyond those permitted to charities exempt under section 501(c)(3). The right of charities to form such groups is acknowledged in the Supreme Court's recent Taxation With Representation decision. Many CFC participants -- from the Moral Majority Foundation (related to Moral Majority, Inc.) to the NAACP Special Contributions Fund (related to the NAACP itself) have such affiliates.

(3) International Planned Parenthood Federation (IPPF). This is a foreign organization, the international group of which some 90 national Planned Parenthood units are members. It receives, as a grantee, some PPFA money.[4] Clearly, there is no basis for treating all grantees of a CFC agency as participants themselves. Nor are the international bodies with which such CFC participants as the American Red Cross have continuing

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[4] Contrary to your suggestion (p. 8), U.S. charities are entirely free to make gifts to overseas organizations for charitable purposes. E.g., Treas. Reg. § 53.4945-5(a)(5). Were it otherwise, scarcely any ISA in the CFC could operate.

relationships properly treated as CFC participants for eligibility purposes.

(4) The Alan Guttmacher Institute. This is a research organization, a separately incorporated section 501(c)(3) entity that is treated as a special affiliate of PPFA and included like the other affiliates. The objection seems to be that Alan Guttmacher Institute does not include the words "Planned Parenthood" in its name. There is no basis in the regulations or in common sense for such a requirement.

(5) The Planned Parenthood-World Population trademark. Your letter refers only to the September 7 hearing at which this question (not included in the list your counsel approved as the subject matter of the hearing) was first raised. It ignores the answer given two days later:[5]

> Question: Is it proper for PPFA to be listed in the CFC under its trademark "Planned Parenthood-World Population"?
>
> Answer: Yes. The trademark "Planned Parenthood-World Population" is used for a variety of Planned Parenthood's fundraising for overseas efforts. It is used for the CFC because it has acquired a familiarity and recognition in the CFC campaign. The use of trademarks or common names in the CFC is not limited to Planned Parenthood-World Population. For example, CARE and Project Hope,

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[5] Your letter again misquotes the transcript in this connection (p. 6). The statement "I have answered the question" was not said in respect to the "scope of PP/WP activities," and is in any event only part of what was said. The full sentence was "I have answered the question of what agency is applying." The relevant pages of the September 7 transcript are attached as Exhibit C.

> both of which participate in the CFC under those names, are not the corporate names of the entities (which are respectively, the Cooperative for American Relief Everywhere, and People to People Health Foundation).

Planned Parenthood-World Population is not a "program" of PPFA any more than "CARE" or "Project Hope" is a "program" of their respective corporate entities. Rather, as explained in the application and at the hearing, it is a name, derived from a predecessor organization, used (as "CARE" is) for fund raising purposes because of widespread recognition and acceptance in the context of Planned Parenthood's international effort.[6]

6. How can affiliates be "largely autonomous" and "closely supervised." The affiliates are, as explained at the hearing, independent local community bodies, with their own section 501(c)(3) exemptions, local boards, and local programs. As a condition of affiliation, they must meet a variety of national standards, set forth in the PPFA by-laws (a copy of which is in the PPFA application file) related to quality of service, financial integrity, and the like. This sort of "federalism" relationship is common in American charities, including such CFC participants as the United Way, the American Heart Association, the American Diabetes Association and the Leukemia Society.

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[6] This seemed clear to you last year, for you wrote, "I understand that the name 'Planned Parenthood World Population' is merely the name by which PPF of A wishes to solicit funds through

In sum, Planned Parenthood has been entirely clear about what entity is applying: All questions about related entities have been answered, and there is no basis for claiming that the relevant financial tests cannot be evaluated because of lack of definition of the entity to which they are to be applied.

VI. Does Planned Parenthood Meet the 50/20 Requirement?

This section of your letter begins (p. 6) with at least five different computations, using different bases. Only one -- that for PPFA alone -- is relevant.

The only basis for claiming that PPFA -- which receives over $11 million dollars, i.e., over 33% of its support, from the public -- fails the test of 20% public support is the claim that "the amount of non-tax deductible funds involved is in dispute," so the amount of public support can not be measured. As explained above, the requirement of the 20% public support test is that the funds counted be "direct and/or indirect contributions," not that they be tax-deductible. In any case, the $78,000 received in 1982 under the fund-raising letter at issue is miniscule relative to the $11 million of public support. If it were excluded the public support percentage would drop only .18% to 33.06%. Thus PPFA, even on an incorrect view that excludes the proceeds of the disputed letter, would amply meet the 20% test.

(cont.)

the CFC." Letter of August 2, 1982 (Exhibit B).

(Your letter concedes, if only implicitly, that the entity PPFA plus affiliates, i.e., the totals required by the regulations to be shown in the Source of Funds and Costs Report, meets both the 50% and 20% tests.)

VII. Does the PPFA/Non-State, Local Affiliate "Planned Parenthood" Entity Meet the Requirements for Entry Into the CFC?

This section -- apparently the decisive one -- is essentially a discussion of the role of the Standards of Accounting and Financial Reporting For Voluntary Health and Welfare Organizations in CFC compliance and their relation to the Audit Guide of the AICPA. We submit that your conclusion that PPFA (or PPFA plus affiliates) fails to meet "the substance of the Standards" is simply wrong, and rests on application to Planned Parenthood of hypertechnical criteria not applied to other approved CFC participants.

The objective of the regulations is clearly that all participants maintain and publish sound financial records, but the regulations, no doubt reflecting the lack of a single, universally accepted set of rules for all kinds of charity financial record-keeping and accounting, are less than crystal clear on the exact technical requirements. And, as a brief review of the applications of admitted organizations shows, you have -- quite reasonably -- applied a flexible standard to measure compliance with accounting requirements. Only by departing sharply from that practice could Planned Parenthood be excluded on accounting practice grounds.

PPFA has met amply the real requirement -- sound accounting. It is not disputed that PPFA submitted financial statements for itself certified by one of the leading accounting firms in America, Peat, Marwick, Mitchell and Co. (PMM) as in accord with generally accepted accounting principles, or that a PMM partner certified for CFC purposes that those principles included those prescribed in the *Standards*. (The two PMM letters are attached as Exhibit D and E.) Nor is it disputed that all Planned Parenthood affiliates are audited under generally accepted accounting principles by independent certified public accountants.

Further, as to the relationship of the *Standards* to the *Audit Guide*, it is agreed that they are prepared for somewhat different purposes, and that the *Standards* and the *Audit Guide* are, as the Foreword to the *Standards* says "intended to achieve compatibility with" the *Audit Guide* but that the *Guide* and *Standards* are not exactly identical.[7]

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[7] The assertion, p. 8, that under both the *Guide* and the *Standards*, funds raised for lobbying should be reported separately is mysterious since neither refers explicitly to lobbying at all, so far as we can determine. If it means that all restricted funds should be separately shown, *see Standards*, p. 29, the answer is that, as explained above, there are no funds that PPFA treats as restricted to lobbying. The *Standards*, in

Compliance with every detail of the *Standards* especially when they differ from the *Audit Guide*, far from being the clear-cut fundamental of the CFC regulations you claim (p. 7), is simply not required at all. The regulations are quite murky on the subject. There are at least five relevant provisions:

§ 950.405(a)(3), second clause: "adopts and employs the *Standards*." The context in which the Standards must be employed is unstated.

§ 950.405(a)(3) first part of third clause: "prepares and makes available to the public *an annual financial report* [not necessarily its only report or its CPA-audited report] prepared in accordance with the *Standards*."

§ 950.405(a)(3) (second part of the clause) the annual financial report "is certified, using the form in Appendix B ... by an independent certified public accountant."

§ 905.407(f)(7) "certification by an independent certified public accountant of compliance with *an acceptable* financial system and adoption of the Uniform Standards" [a term not elsewhere defined].

§ 950.407(f)(10) "copy of latest financial report prepared in accordance with the *Standards* ... and certification

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(cont.)
fact, stress the importance of clarity of restrictions before funds are shown separately as donor-restricted.

by an independent certified public accountant that the report was prepared in conformity with the Standards."

§ 950.407(f)(11) "Copy of latest external audit by an independent certified public accountant" [evidently a different document from that required in § 950.407(f)(10)].

§ 950.407(f)(12) "A special report to the Director [evidently different from both the 'external audit' and the "annual financial report"], consistent with the reporting requirement of the Standards ... furnished in accordance with the format shown in the appendix."

Appendix B -- a form of certificate saying "I certify that the above named organization has adopted, and has prepared its financial statements [all of them? the CFC special report? the "annual financial report"? the audited report?] in accordance with the Standards."

The varied formulations of the regulations compound a confusion caused by the fact that the Audit Guide is addressed to accountants for audit purposes while the Standards are addressed to general public reporting. Despite substantial convergence, noted both in the Standards and in Mr. Fischer's affidavit, there remained some differences between these two guides. Different accountants and different charity financial experts no doubt disagree over the exact scope and significance of the differences.

Not surprisingly, applicants to the CFC and their accountants have interpreted this welter of regulation requirements and slightly different *Audit Guide* and *Standards* rules in a variety of ways. The following sample of the range of approaches is based on a partial review of 1983 CFC applications:

- Some present the Appendix B format exactly, but signed by a staff officer, not an outside CPA. (Diabetes Association; Public Citizen Foundation; United Way of America until September 12, *i.e.*, after its admission.)

- Some simply rely on the traditional auditors' "management letter" attached to their audited financial statements, which letter certifies compliance with "generally accepted accounting" principles or standards ("GAAP"). These principles are either not specifically defined or defined as one of the AICPA statements. (Boys Clubs of America, Capital Legal Foundation, National Sudden Infant Death Syndrome Foundation).

- Some state that the financials follow GAAP, sometimes specifically defined as the *Audit Guide* or an equivalent AICPA publications, and then assert that the GAAP or those AICPA rules are "the same as" or "in compliance with" or that they "accomplish in substance the same purposes" as those of the *Standards*, sometimes with stated exceptions. (Mental Health Law Project, National Hospice Organization, National Right to Work Legal Defense and Educational Foundation, National Society to Prevent Blindness, March of Dimes Birth Defects Foundation).

- Some state that use of AICPA guidelines is preferable to the Standards. (Hunger Project.)

- Some state that the financial statements comply with both the Standards and the AICPA rules. (National Multiple Sclerosis Society.) PMM's statement for PPFA falls in this category, for it says that PPFA's financials follow GAAP and that for an organization such as PPFA, GAAP means the principles "prescribed by [the Audit Guide] and the Standards."

- Some state that the Standards do not apply to them because the AICPA rules do apply. (Wilderness Society)

- Some provide the exact words of Appendix B. In at least one instance -- the Conservative Legal Defense and Education Fund -- the required certificate was filed, signed by a CPA, and the organization was admitted, despite a staff review noting that "reports in no way comply with standards."

Since the Standards are not rules for audits conducted by CPA's, which are governed by the AICPA rules, but for reporting to the general public, see Standards, p. 3, it is unlikely that any CFC participant complies with what you claim is "a requirement of the CFC that all applicants be audited under the Standards."

There are, no doubt, other forms employed, since we have not yet reviewed every single successful application.

We submit that acceptance of these varied forms is correct.

Jerry Falwell

October 1, 1982

Dear Friend,

I urgently need you to send me a tax-deductible gift of $50, $25, or even $15.

And I must, at the same time, ask you to postmark your letter and gift no later than midnight, Friday, October 15, 1982.

On November 2nd, American voters will go to the polls and that's why I need your help so urgently. You and I may be only a few weeks away from a national disaster and for that reason . . . we have just launched a "Thirty Day National Blitz".

And unless special friends like you come to our aid immediately with one of the largest gifts you've ever made to the Moral Majority — we may suffer a major defeat on election day. You see, the liberals are already bragging that pro-moral candidates will lose 50 seats in the House and some seats in the Senate this November.

And they could be right — if you and I don't act immediately. This is why I went to the trouble and expense to send this urgent letter to you. I just had to be sure that you received my letter in time to send help for our "Thirty Day National Blitz".

As you know, the Moral Majority Foundation, unlike Moral Majority, Inc., is not a political lobbying organization . . . and therefore, the Foundation can provide a tax-deductible receipt to all contributors.

At this very moment we have legislation in Congress that, if passed, could end once and for all the legal murder of 1.5 million unborn babies a year, protect the traditional American family, and allow our children to pray in the public schools again — and much, much more.

And yet, all the moral ground we've gained the past two years could be lost if the liberal politicians are able to regain control of Congress in this election.

I know we can reverse these ominous election day predictions if you and I act now!! But there is no way we can achieve this victory without your immediate financial support.

I tell you this because, right now -- at this year's most crucial hour — we need to mobilize a massive campaign unlike anything the secular humanists have ever witnessed.

The Moral Majority, as I said, has no special funds for this emergency effort.

And yet, I refuse to let this stop us! I flatly refuse to let the pro-abortionists, anti-school prayer advocates, and humanists force us to accept defeat. So I'm turning to you today to ask for one of the largest gifts you've ever sent to the Moral Majority.

And because you will be making it to our Foundation, it is tax-deductible.

I realize I'm asking a great deal of you today — but I have a plan which, in my opinion, can reverse the negative electoral predictions. I call this plan the "Thirty Day National Blitz". If I can raise the funds to work this plan, I sincerely believe we can repeat much of what conservative Americans did in November of 1980.

Here's my plan:

1. I must activate the 80,000 pastors, rabbis, priests and Christian school leaders involved in the Moral Majority and ask them to mobilize their congregations immediately. You see, these men speak to between 20 and 30 million people each week -- and when they speak, their flocks listen!

2. We much launch a desperately needed telephone campaign to reach hundreds of thousands of people right before the election -- and encourage them to vote for pro-life, pro-traditional family and pro-school prayer candidates.

3. We must continue to air my prime-time television special across the country. This television special is having the most dramatic effect of anything we have done to date and this particular month is when Americans need to see this prime-time special most!

This plan, in my opinion, can put millions of concerned voters at the polls next month. And while we do not endorse particular candidates, we know that our people will vote for those candidates who take a clear stand on the moral issues so important to our nation's survival.

This "Thirty Day National Blitz", in my opinion, will guarantee that we sustain few or no losses on November 2nd and with God's help I am convinced that you and I, and millions like us, can definitely make the difference.

So please, won't you sit down right now and write your check out for $50, $25, or even $15 (or whatever you can give).

And don't forget to send me your reply no later than midnight Friday, October 15, 1982.

I want to remind you one more time: we are less than 30 days away from a possible national disaster!

If pro-moral Americans are ever going to sacrifice to save our nation, the time to act is now!

Remember, we just don't have the money to continue our fight on so many major fronts simultaneously without your financial help.

I must hear from you now because we have already launched the "Thirty Day National Blitz". In order to win, we must pull out all the stops.

Please, please decide what you can do to help me today. Tomorrow may be too late. I will be anxiously awaiting your reply.

Sincerely,

Jerry

Jerry Falwell

P.S. I have enclosed a special envelope marked "Personal and Confidential" for you to use today.

So please mail your tax-deductible check in the amount of $50, $25, or even $15 (or whatever) back to me immediately in this "Personal and Confidential" envelope. In my opinion, the "Thirty Day National Blitz" will guarantee few or no losses on November 2nd. But please have your gift postmarked on or before midnight, Friday, October 15th.

30 Days Away From Disaster!!

MORAL MAJORITY FOUNDATION REPLY CARD

Dear Jerry,

☐ **YES!** Here is a special gift to help the Moral Majority reach millions of voters prior to Election Day.

Enclosed is my: ☐$ 25 ☐$ ______(other)

Thank you! Remember your gift is tax deductible, since it will be used for educational purposes.

Make Your Check Payable to Moral Majority Foundation, P.O. Box 190, Forest, VA 24551

United States
Office of
Personnel Management Washington, D.C. 20415

In Reply Refer To Your Reference

August 2, 1982

Messrs. Walter B. Slocombe
and Geoffrey Judd Vitt
Caplin & Drysdale
1101 Seventeenth Street, N.W.
Washington, D.C. 20036

Gentlemen:

This morning I received and read your letter of July 29, 1982, written on behalf of your client, "Planned Parenthood - World Population." It is important at the outset, I think, that I make it clear that the voluntary agency that has been admitted to the current Combined Federal Campaign (CFC) is actually the legal entity, the Planned Parenthood Federation of America, Inc., ("PPF of A"). I understand that the name, "Planned Parenthood - World Population," is merely the name by which PPF of A wishes to solicit funds through the CFC.

You request that PPF of A be reassigned within the national Combined Federal Campaign (CFC) from the National Services Agencies group (NSA) to the International Services Agencies group (ISA). You state three reasons in support of your request: (1) that PPF of A has hitherto been assigned to ISA; (2) that the assignment of PPF of A to NSA requires that PPF of A apply to local campaigns for admission; and (3) that the assignment of PPF of A to NSA jeopardizes its entitlement to a share of undesignated funds. Let me address each of these points in turn.

First, voluntary agencies are assigned to federated groups within the CFC only when they do not choose to affiliate with participating independent, private federations such as United Way. ISA and NSA are entities of a different kind. The distinction between ISA and NSA is the distinction between charitable services rendered overseas and those that are provided domestically to Americans. PPF of A's national application materials plainly indicate that its activities are significantly domestic in scope. PPF of A reported a total of $158,025,333 in support and revenue in 1980. Only $16,861,383, representing just 10.6% of that revenue, was expended for international sefvices.

CFC contributors are entitled to a fair depiction of where their gifts are going. Classification of PPF of A as an international service agency would seriously mislead all contributors, particularly those who choose to give to ISA as a federation, or who rely upon the category "international," in the hope that their donations would go exclusively to charities overseas. Clearly, PPF of A represents a mixed entity; its services are furnished partly overseas and partly domestically. The preponderance (apparently well beyond--in the ratio of 9 to 1) of its activity is domestic, however. For that reason, the only appropriate conclusion is that PPF of A should be assigned to the national service category. Although in prior years PPF of A was assigned by the Government to ISA, there is no reason to perpetuate earlier inaccuracies, once they are discerned.

Second, because PPF of A's activities--at least as described in its CFC submission--are not sufficiently international, there is no just reason to excuse it from the local application rules which apply to all other agencies with significant domestic operations. Simple fairness requires that PPF of A be treated neither more nor less favorably than other voluntary agencies in similar circumstances. Certainly the materials submitted to date show no good cause for excusing PPF of A from application requirements that all other such groups must meet.

Your letter asserts that PPF of A does not have sufficient time between now and the local application deadline, August 9, 1982, to work out arrangements for local participation and to submit the appropriate applications. I find this puzzling. As you note in your letter, PPF of A has 190 local affiliates. This is a clear advantage over many other national agencies, and one which should greatly ease the burden of gaining entry to local campaigns. Nonetheless, because some confusion may have resulted from prior, erroneous assignments of PPF of A to ISA, I am willing to entertain a petition for an extension of time in which PPF of A may apply for participation in local campaigns and work out local arrangements. If you desire so to petition, please do so in writing no later than August 5, 1982. Your submission should be delivered directly to my office, and should clearly explain why the extension of time is sought and how it would promote efficiency and fairness in the administration of the CFC. Meanwhile, by copies of this letter I shall urge all Local Federal Coordinating Committees to be as cooperative as possible in assisting PPF of A to complete proper applications and to achieve timely negotiations of local arrangements.

Finally, your letter reflects a fundamental misperception regarding the reformed CFC. Contributions will no longer be undesignated; donors must either designate them for specified voluntary agencies (such as PPF of A) or federations (such as NSA), or contribute them to local Principal Combined Fund Organizations (PCFOs) for distribution by the PCFO. The Government is entirely removed from this process, save for its retention of a general oversight authority exercised in the interests of fairness, equity, honesty, and accurate disclosure. Let me be clear in describing these reforms. PPF of A will be entitled to all contributions which are designated for it by donors. PPF of A will also be eligible for a share of gifts that are designated by donors for the federated group of which it is a member, i.e., the NSA. NSA and ISA are on absolutely equal footings in being eligible for group designations. There are no other "entitlements" guaranteed by the CFC. We will require PCFOs to manage local campaigns fairly and equitably, but will not substitute our judgments for those of our employee donors or of PCFOs, representatives of the local community.

If PPF of A or other voluntary agencies wish to be considered for distributions by PCFOs, then I encourage direct contact with the PCFOs involved. This is all the more reason for an agency such as PPF of A to undertake now, through the application process, to build solid communications with campaign leaders at the local level.

Sincerely,

Donald J. Devine
Director

and spent most of Friday afternoon with Mr. Morris and Mr. Levinson asking them what questions it was they wanted answered.

MR. DEVINE: I understand, and again, to me, asking what agency is applying is pretty clearly asking what is the name of it, which you yourself gave a name --

MR. SLOCOMBE: Planned Parenthood Federation of America, Inc., is the name of it.

MR. DEVINE: Do you have any knowledge why the term Planned Parenthood-World Population was used for this Campaign?

MR. SLOCOMBE: I don't of my own knowledge. Bear with me a second.

(Pause.)

MR. SLOCOMBE: I would refer you to tab 1 of the application. Without waiving my objection to new matters being raised, the question of the corporate name is addressed in the answer to the first question in the CFC application.

The name which has been used since 1968 -- it goes back to a 1960 organization, an organization called World Population Emergency Campaign which was created in 1960. And the historical background of that name is described in tab 1 of the application.

I repeat that while we would have been perfectly happy to provide detailed information on that or any other matter, we object to the procedure of these technical questions being raised at this point in the proceeding.

This matter has been in the application. If you or your agents thought it was unclear or needed clarification, you've had it since July 5th and we would have been glad to answer questions related to it, and specifically if it had been raised on Friday.

I cannot at this point add anything to what is stated on that page, and I believe it is improper and irregular and a violation of the procedures agreed on to raise the issue any further.

MR. DEVINE: So noted. I will note that it appears, and I have read this statement before, that the terms are co-extensive, but you would prefer to add nothing, or don't feel it's appropriate to add anything to that?

MR. SLOCOMBE: Having exhaustively asked Mr. Morris and Mr. Levinson, who were acting for you, what questions we were supposed to be prepared to answer, I object to the procedure of new questions of a technical nature being raised at this point.

MR. DEVINE: I understand your point, but my position is that these are all questions which are very relevant to the question of what agency is applying.

MR. SLOCOMBE: I have answered the question of what agency is applying.

MR. DEVINE: I don't feel that you did to my satisfaction.

MR. SLOCOMBE: Well, what on earth would satisfy you?

MR. DEVINE: Some explanation of the relationship of the different organizations that are involved with various combinations -- the name Planned Parenthood or Family Planning-International Assistance.

MR. SLOCOMBE: Family Planning-International Assistance is a largely AID-funded program. It is a program of Planned Parenthood. It is also described exhaustively in the materials and a report of many, many pages long was provided to your staff in response to their question about that.

MR. DEVINE: In your response to earlier questions that we asked in this same regard, you said that a majority of the -- I believe you said that a majority of the funds from the Combined Federal Campaign go to Family Planning-International Assistance and International Planned Parenthood Federation.

MR. SLOCOMBE: Yes, I think that's covered in number 7, isn't it? Yes, that is correct. What we said is what it says on page 12.

MR. DEVINE: Am I missing something on page 12? Does it mention Family Planning-International Assistance or the International Planned --

MR. SLOCOMBE: The two PPFA overseas programs in question are Family Planning-International Assistance and International Planned Parenthood Federation.

ACCOUNTANTS' LETTER

Name of Organization Planned Parenthood Federation of America, Inc. (PPWP)

As indicated in our accountants' report dated March 24, 1983, the financial statements of Planned Parenthood Federation of America, Inc. as of and for the year ended December 31, 1982 were prepared in conformity with generally accepted accounting principles. Generally accepted accounting principles for an organization such as Planned Parenthood Federation of America, Inc. are those prescribed by the industry audit guide entitled Audits of Voluntary Health and Welfare Organizations published by the American Institute of Certified Public Accountants and the Standards of Accounting and Financial Reporting for Voluntary Health and Welfare Organizations (1974 Edition) prepared and published by the National Health Council, Inc., the National Assembly of National Voluntary Health and Welfare Organizations, Inc. and the United Way of America.

Signature:

Firm: Peat, Marwick, Mitchell & Co.

Address: 345 Park Avenue
New York, New York 10154

PEAT
MARWICK

Peat, Marwick, Mitchell & Co.
Certified Public Accountants
345 Park Avenue
New York, NY 10154

The Board of Directors
Planned Parenthood Federation
of America, Inc.:

We have examined the balance sheet of Planned Parenthood Federation of America, Inc. as of December 31, 1982 and the related statements of support, revenue, and expenses, and charges in fund balances, and of functional expenses for the year then ended. Our examination was made in accordance with generally accepted auditing standards and, accordingly, included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

As explained in note 7 to the financial statements, final settlement with respect to the recovery of program administrative charges under grants from the Agency for International Development subsequent to December 31, 1974 has not been made. The final outcome of such settlement is not presently determinable.

In our opinion, subject to the effects of such adjustments, if any, as might have been required had the ultimate outcome of the matter discussed in the preceding paragraph been known, the aforementioned financial statements present fairly the financial position of Planned Parenthood Federation of America, Inc. at December 31, 1982 and the results of its operations and changes in fund balances for the year then ended, in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year.

Peat, Marwick, Mitchell & Co.

March 25, 1983

APPENDIX 13

United States
Office of
Personnel Management
Washington, D.C. 20415

In Reply Refer To
Your Reference

September 15, 1983

Walter Slocombe, Esq.
Caplin & Drysdale, Chartered
1101 Seventeenth Street, N.W.
Washington, D.C. 20036

Re: Request for Reconsideration
of the Decision of the
Director of OPM Denying
National Eligibility to
Planned Parenthood for
the 1983 CFC

Dear Mr. Slocombe:

Yesterday I issued a ruling denying Planned Parenthood's application for admission to the 1983 CFC. This morning, I received your letter on behalf of Planned Parenthood requesting that I reconsider and reverse yesterday's decision. This letter constitutes my decision on your administrative appeal.

Initially, it should be noted that most of the points you raise do not address the core ground of my decision. For example, the issue of the tax deductibility of contributions used for lobbying purposes is not a crucial element with respect to your application. Rather, it is a matter that, because of the obscure record made here by the applicant, calls for a more careful review of the application. In this regard, I note that although Revenue Rulings may not always be accepted by the courts, they are Executive Branch issuances that reflect the view of the Executive Branch on tax law matters. Accordingly, I am not free to ignore them but must give them full force and effect unless and until a court rules otherwise.

Similarly, the points you have raised over what you term the "abortion issue," the question of entity definition, and the 50/70 rule, are not responsive to the reason for my decision. Again, these are issues that, because of ambiguities on the record, have triggered an examination of Planned Parenthood's application.

Dispositive, as you recognize, is Part VII of my decision. You have indicated a number of instances in which you believe Planned Parenthood's application has been treated unequally with respect to the accounting requirements in the CFC regulations. You cite a number of examples from the applications of other organizations seeking admission to the 1983 CFC where you submit that the financial reporting requirements have not been met.

As you know, the Federal government has limited resources with which to conduct the CFC, and it therefore must rely, in part, upon public participation in the eligibility process. Although your submission in this regard is late, the issues you have raised with respect to the financial data of other organizations are genuine. Accordingly, today I am directing the staff of OPM to conduct an investigation of the applications of those organizations that you have indicated may not satisfy the financial requirements of the regulations.

Obviously, the administrative process must be conducted in a manner that ensures fairness and provides equal treatment. Given the complexity of the CFC program, and the limited resources with which it is conducted, it is not inconceivable that inconsistent applications of the regulations may not occur. Any such finding, however, must not be used as an excuse to permit entry of non-conforming organizations. Indeed, such findings must trigger further review to determine whether other organizations may be disqualified from the Campaign. In this regard, I note again that 72 applicants to the 1983 CFC were rejected on grounds similar to those upon which Planned Parenthood's application was rejected.

Accordingly, I find that none of the arguments posited in your letter for reconsideration warrant a reversal of my initial decision in this matter. I, therefore, reaffirm my September 14, 1983, decision.

Sincerely,

Donald J. Devine
Director

APPENDIX 14

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED

SEP 15 1983

JAMES E. DAVEY, Clerk

PLANNED PARENTHOOD FEDERATION OF AMERICA, INC., et al.,

Plaintiffs,

v.

THE HONORABLE DONALD J. DEVINE,

Defendant.

Civil Action No. 83-2118

ORDER

Plaintiff, Planned Parenthood Federation of America, Inc. ("Planned Parenthood") has moved this Court for the entry of an order directing the defendant, Donald J. Devine, to declare Planned Parenthood to be a national voluntary agency approved for participation in the 1983 Combined Federal Campaign (CFC). The history of this case is recounted in the Court's Order of September 14, 1983. In that Order, the Court directed defendant to issue a prompt decision, supported by cogent reasons, as to plaintiff's application. The defendant reached his decision denying plaintiff's application just prior to the 3:00 p.m. time specified by the Court, and plaintiff was advised that it had 10 days to request reconsideration by the defendant pursuant to 5 C.F.R. § 950.407(e) and 48 Fed. Reg. 34914 (Aug. 1, 1983). Planned Parenthood submitted a lengthy request for reconsideration early this morning, September 15, 1983. This request was similarly denied today at approximately 2:30 p.m., at which time the Court indicated it would consider the instant motion as plaintiff's appeal of defendant's decision. The unique and considerable time pressures which accompany this appeal, compel the Court to issue what is, in essence, a temporary restraining order, rather than a permanent injunction, this date. Plaintiff has demonstrated that it meets the requirements of Virginia Petroleum Jobbers Ass'n v. Federal Power Commission, 259 F.2d 921, 925 (D.C. Cir. 1958), and Washington Metropolitan Area Transit Comm. v. Holiday Tours, Inc., 559 F.2d 841 843 (D.C. Cir. 1977).

1. Plaintiff has made a conclusive showing of irreparable injury should injunctive relief be denied. Defendant has authorized local committees to finalize participant lists for the CFC on Monday, September 19, 1983. Should plaintiff be finally excluded from the 1983 CFC it will lose this fertile source of financial contributions, approximately half a million dollars in recent years. Moreover, some federal employees will be deprived of the opportunity to donate to the organization of their choice. For a more complete discussion of the extent of the harm to plaintiff if excluded, see Orders, July 15 and July 26, 1983.

2. Plaintiff has made a strong showing that it is likely to succeed on the merits. Defendant maintains that the "dispositive" reason for the exclusion from the 1983 CFC was that plaintiff did not comply with prescribed accounting practices--the "Standards". However, several other organizations similarly failed to follow exactly those same standards, and nonetheless

were approved for the CFC program. In his final denial, defendant concedes that "given the complexity of the CFC program, and the limited resources with which it is conducted, it is not inconceivable that inconsistent applications of the regulations may occur." While the Court cannot finalize, without further evidence, the question of compliance with accounting practices or some irregularity, it cannot be ignored that plaintiff has participated for 15 immediate past years in the CFC and that its audit has been completed through examination by a nationally reputable certified public accountant, according to elsewhere accepted guidelines. In light of the differential treatment, the extraordinary and inexplicable delays in the consideration of plaintiff's application, the overall tone of the continuous inquiries, the controversial nature of plaintiff's activities, and defendant's admitted bias against those activities, the Court must conclude that defendant's proffered grounds for denial are merely pretextual, and directly counter this Court's 1983 Orders, both July 15 and 26.

3. The harm to plaintiff in denying the requested relief overwhelmingly outweighs the harm to defendant in granting it. Exclusion of plaintiff at this stage would be irrevocable. Yet, should the Court subsequently determine that exclusion is indeed warranted, the local committees could simply strike plaintiff from the list of participants.

4. The public interest would be served by the issuance of an order directing plaintiff's inclusion. Federal employees have

been invited to contribute to Planned Parenthood since 1968. In 1981 and again in 1982 they have had Dr. Devine's approval of their contributions. These employees certainly do not have to designate funds to Planned Parenthood, but they must be permitted independently to exercise free choice. The public would be otherwise gravely disserved. It is a matter of fairness and forthrightness.

Accordingly, to enable the parties to fully marshal and articulate their arguments in open court with supporting testimony, as appropriate, plaintiff's motion for a permanent injunction will be heard on September 26, 1983, at 1:30 p.m. at the expiration of the temporary restraining order hereby issued--the outside date designated by Dr. Devine for plaintiff to appeal his decision. Supporting papers from either side for the hearing on September 26 must be filed no later than 4:00 p.m., September 22, 1983.

It is ORDERED

that defendant, Donald J. Devine, his employees, agents and any others acting under his direction, be and they hereby are directed to immediately and unequivocally include Planned Parenthood Federation of America, Inc., as a national voluntary agency for participation in the 1983 CFC. This exact Order must be communicated to all local committees across the nation within 24 hours from its issuance to permit plaintiff's inclusion in the lists to be finalized Monday, September 19, 1983.

Plaintiff, Planned Parenthood Federation of America, Inc., shall post a bond, cash or surety, in the sum of $100.00 no later than 4:00 p.m., Friday, September 16, 1983.

This Temporary Restraining Order has been issued at 5:59 p.m., September 15, 1983, and will expire at 5:59 p.m., on September 26, 1983, unless earlier extended or until further Order of this Court.

JOYCE HENS GREEN
United States District Judge

September 15, 1983

APPENDIX 15

United States
Office of
Personnel Management
Washington, D.C. 20415

In Reply Refer To:
Your Reference

SEP 16 1983

Ms. Faye Wattleton
President
Planned Parenthood Federation of America, Inc.
810 Seventh Avenue
New York, New York 10019

Dear Ms. Wattleton:

As you know, by virtue of an order issued by the United States District Court for the District of Columbia on September 15, 1983, Planned Parenthood Federation of America, Inc. (PPFA) will be included in the Combined Federal Campaign for 1983-84 (CFC). The question remains, however, to which federated group PPFA properly should be assigned.

Based upon a review of the PPFA application submitted for purposes of the 1983-84 Campaign and the decisional standards set forth in Federal Personnel Manual (FPM) Letter No. 950-1 § 2(d), I hereby assign PPFA to the International Services Agencies federated group (ISA) for the domestic Campaign and to ISA/Overseas for the overseas Campaign.

FPM Letter No. 950-1 § 2(d) provides, in pertinent part, as follows:

> Under the previous rules for the CFC and the Manual on Fund-Raising Within the Federal Service, OPM established . . . three domestic federated groups: the International Services Agencies (ISA), the National Health Agencies (NHA), and the National Service Agencies (NSA). All voluntary agencies that are not members of the American Red Cross, United Way, or an independent private federated group admitted to the CFC, will be assigned for purposes of the domestic CFC to ISA, NHA, or NSA. Assignments will be made according to the following criteria:

> (1) A voluntary agency whose services are rendered exclusively or in substantial preponderance overseas will be assigned to ISA.
>
> * * *
>
> (2) All other voluntary agencies, including those of a mixed character, will be assigned to NSA.

According to the Combined Sources of Funds and Costs Report submitted by PPFA, the ratio of expenditures for international services compared to total expenditures was 59.9 percent for 1982. The ratio of international services expenses compared to total programmatic expenditures was 72.9 percent. These ratios represent a significant increase over the proportion of PPFA expenses for international services in 1981 (i.e., 51.9 percent and 67 percent, respectively).

These ratios satisfy the "substantial preponderance" requirement which governs assignments of national voluntary agencies to the ISA federated group. Furthermore, unlike the situation last year, PPFA's percentages of expenditures devoted to international services are not disparate from those of other charities participating in the CFC in the ISA federated group.

This communication represents my final determination of the assignment of Planned Parenthood to the appropriate federated group for purposes of the 1983-84 Combined Federal Campaign.

Sincerely,

Donald J. Devine
Director

APPENDIX 16

AUG 22 1983

Ms. Faye Wattleton
President
Planned Parenthood Federation of America
810 Seventh Avenue
New York, NY 10019

Dear Ms. Wattleton:

In anticipation of questions that may arise in the upcoming Combined Federal Campaign eligibility decision process, will you please address the following concerning your organization's application?

1. Does the Planned Parenthood Federation of America (PPFA) or any of its domestic or international affiliates receive public contributions which are not tax deductible under 26 U.S.C. § 170? If so, please amend the Combined Source of Funds and Costs Report to indicate the amount of such contributions for the year ending December 31, 1982.

2. Please amend the Combined Source of Funds and Costs Report to indicate the amount of expenditures made in the year ending December 31, 1982, to carry out the "Public Impact Program," the "Priority State Program" and other activities of PPFA and its affiliates which involve lobbying the Federal or state governments (including both the Executive and Legislative branches). Data should include both direct expenses and costs incurred in encouraging action by citizens and interest groups to influence decisions made by the Federal and state governments. Any non-tax exempt funds expended for these purposes should be identified.

3. Please provide financial accounting regarding the revenues and expenditures of Family Planning International Assistance and International Planned Parenthood Federation. These reports should be in conformity with the requirements set forth for statements submitted by PPFA (see 5 C.F.R. Part 950).

4. PPFA has represented at prior hearings of the National Eligibility Committee that no funds received by PPFA from or through the CFC are used to pay for abortions, either in the United States or abroad. Please document this representation, indicating how funds are segregated and how accounting is structured to maintain such segregation of funds.

We note that PPFA has made no showing of its eligibility under 5 C.F.R. §§ 950.101(a)(1)(i), 950.101(a)(1)(iv), and 950.101(a)(1)(iv), invoking the order of the United States District Court for the District of Columbia in *PPFA* v. *Devine*. OPM will, of course, obey that order unless and until it is modified or set aside.

Thank you for your cooperation. Please address your response to Mr. Kent Bailey, Office of the Assistant to the Deputy Director for Regional Operations, U.S. Office of Personnel Management, Room 5532, 1900 E Street, N.W., Washington, D.C. 20415.

Sincerely yours,

Joseph A. Morris

Joseph A. Morris
General Counsel

APPENDIX 17

LAW OFFICES
CAPLIN & DRYSDALE
CHARTERED
1101 SEVENTEENTH STREET, N.W.
WASHINGTON, D.C. 20036
(202) 862-5000

August 31, 1983

Mr. Joseph A. Morris
Office of Personnel Management
Office of the General Counsel
1900 E Street, N.W.
Room 5H 30
Washington, D.C. 20415

Dear Mr. Morris:

I have been instructed by Ms. Wattleton to reply to your letter requesting additional information in connection with Planned Parenthood's application for the 1983 CFC.

Before turning to the substance of your requests, I must object to the procedure followed in making this last minute request. OPM has had Planned Parenthood's application materials since July 5. Your letter is date-stamped August 22, but was mailed from OPM at 5 p.m. on Thursday, August 25, and received by Planned Parenthood in New York on Monday, August 29, only two days before Dr. Devine's announced date for making eligibility decisions. I also find it surprising that you did not provide counsel with a copy of the letter until I requested a copy after learning it had been received in New York.

Second, OPM is under a court order not to exclude Planned Parenthood on the ground of the eligibility provisions of Executive Order 12404. Several of your questions are transparent efforts to avoid the impact of that order by inquiries into Planned Parenthood's advocacy and other activities which are irrelevant except under the new eligibility provisions. Insofar as these questions are properly asked of Planned Parenthood, they are equally properly asked of all other participants, and I would appreciate knowing whether similar requests have been made of other applicants.

In many respects, the appropriate course for Planned Parenthood would be to decline to answer these irrelevant last-minute questions and seek the protection of the court against this effort to avoid its order. However, as you undoubtedly realize, failure to answer such questions has an inevitable "have you stopped beating your wife" innuendo. To make clear that our objection is not based on any embarrassment at answering your questions, but without conceding the relevance or propriety of the inquiries and without waiving Planned Parenthood's rights before the court, the attached replies are submitted.

Sincerely yours,

Walter Slocombe

Walter Slocombe

WS/kg

Enclosure

cc: John D. Bates, Esquire

August 31, 1983

REPLIES TO OPM QUESTIONS RE PLANNED PARENTHOOD

1. Does the Planned Parenthood Federation of America (PPFA) or any of its domestic or international affiliates receive public contributions which are not tax deductible under 26 U.S.C. § 170? If so, please amend the Combined Source of Funds and Costs Report to indicate the amount of such contributions for the year ended December 13, 1982.

Answer: The organization that participates in the CFC is PPFA, the national organization. With the exception of gifts from foundations and other non-taxable entities, PPFA does not receive any contributions that are not deductible under section 170 of the Internal Revenue Code (or the equivalent provisions of the estate and gift tax). As a matter of national policy, no U.S. Planned Parenthood affiliate is to solicit non-deductible contributions, PPFA has no reason to believe any affiliate has departed from this policy.

Like many U.S. charities, some local affiliates have established related organizations exempt under provisions other than section 501(c)(3) -- a practice recognized in the Supreme Court's recent decision in the *Taxation With Representation* case. Contributions to such groups are not, of course, tax deductible under section 170, whatever their purpose.

You also ask whether non-deductible contributions are received by PPFA's "international affiliates." PPFA as the U.S. organization has no international affiliates. Planned Parenthood, like many other participants in the CFC, notably the Red Cross, is an international movement, with organizations in many foreign countries. In any case, under the provisions of section 170(c)(2)(A), gifts to foreign organizations are not deductible under section 170.

2. Please amend the Combined Source of Funds and Costs Report to indicate the amount of expenditures made in the year ending December 31, 1982, to carry out the "Public Impact Program," the "Priority State Program" and other activities of PPFA and its affiliates which involve lobbying the Federal or state governments (including both the Executive and Legislative branches). Data should include both direct expenses and costs incurred in encouraging action by citizens and interest groups to influence decisions made by the Federal and state governments. Any non-tax exempt funds expended for these purposes should be identified.

Answer: The particular programs you refer to -- the "Public Impact Program" and the "Priority State Program" -- cover a variety of activities within the PPFA organization besides lobbying -- or even the very broad range of government relations activities misdefined in your question as lobbying. For example, these programs include part of PPFA's overall fundraising costs and general public information efforts. In any event, the definition of lobbying used in your question is incorrect and unsupported in law.

The only expenditures for lobbying made by PPFA are those reported in its annual information return to the IRS (Form 990). In 1982, those expenditures totalled $303,470, of which $215,937 was for grassroots lobbying, as defined in section 4911 of the Internal Revenue Code, and the balance for direct lobbying, as there defined.

The individual affiliates file separate Form 990's and report their lobbying expenditures individually. PPFA does not have copies of those returns, and -- apart from the irrelevance of the question -- the lateness of your request precludes assembling the information from the affiliates. So far as we are aware, none of the affiliates has been challenged by the IRS on the basis of its lobbying activities, and we believe we would have been informed promptly of any such challenge.

> 3. Please provide financial accounting regarding the revenues and expenditures of Family Planning International Assistance and International Planned Parenthood Federation. These reports should be in conformity with requirements set forth for statements submitted by PPFA (See 5 CFR Part 950).

Answer: Family Planning International Assistance is not, as your question implies, a separate organization but a division of PPFA. It is described in some detail on pages 2-4 of section 2 of PPFA's 1983 application. FPIA is largely funded by USAID, and full financial reports are made to USAID. A copy of the most recent report (which is quite lengthy) will be available to OPM on August 31.

The International Planned Parenthood Federation is an international organization, headquartered in London. Its members are the national Planned Parenthood associations in 97 countries. PPFA, as the U.S. association, is only one of these members. A copy of IPPF's most recent annual report with financial statements will likewise be made available to OPM on August 31.

> 4. PPFA has represented at prior hearings of the National Eligibility Committee that no funds received by PPFA from or through the CFC are used to pay for abortions, either in the United States or abroad. Please document this representation, indicating how funds are segregated and how accounting is structured to maintain such segregation of funds.

Answer: As CFC contributions are received, they are credited to PPFA's general fund. No part of PPFA's general fund, whether derived from the CFC or otherwise, is used to provide abortions. The majority of the CFC contributions so credited to the general fund is used to provide the support PPFA gives to IPPF and FPIA from unrestricted private funds. In 1982, PPFA's payments from unrestricted private support to IPPF and FPIA was approximately $350,000. Neither IPPF nor FPIA use funds from PPFA to provide abortions. The balance of the CFC funds are used to support PPFA's domestic activities (including general support) none of which includes the provision of abortions. (A separate fund is maintained by PPFA to provide loans to women who choose to have abortions but cannot pay for them. That fund is financed entirely from contributions specifically earmarked by donors for that purpose and no general fund money is used for it.)

APPENDIX 18

United States
**Office of
Personnel Management**
Washington, D.C. 20415

In Reply Refer To
Your Reference

September 1, 1983

RECEIVED
SEP 1 1983
CAPLIN & DRYSDALE

Ms. Faye Wattleton
President
Planned Parenthood Federation
of America, Inc.
810 Seventh Avenue
New York, New York 10019

Mr. Walter Slocombe
Caplin & Drysdale, Chartered
1101 Seventeenth Street, N.W.
Washington, D.C. 20036

Re: Notice of Hearing on the
Application of Planned
Parenthood Federation of
America, Inc., to Participate
in the 1983 Combined Federal
Campaign

Dear Ms. Wattleton and Mr. Slocombe:

Please be advised that a public hearing will be held to address issues raised, but not resolved, at the meeting of the National Eligibility Committee for the Combined Federal Campaign (CFC) held on August 31, 1983, concerning whether Planned Parenthood Federation of America, Inc., satisfies the national eligibility requirements of the regulations governing admission to the CFC. In view of the need to resolve these issues expeditiously, so as to permit the timely commencement of the 1983 CFC and to afford the applicant a reasonable period within which to appeal an adverse determination, if any, this hearing is scheduled for 9:30 a.m. on Friday, September 2, 1983, in the Auditorium of the Office of Personnel Management, 1900 E Street, N.W., Ground Floor, Washington, D.C. To assure that the Director has a full record upon which he can make a determination, we urge you and your representatives to attend.

The unresolved issues to which we refer relate to the financial, reporting, and auditing data that you have submitted in support of your organization's application. Statements submitted by the National Right to Life Committee, Inc., have raised a series of questions about whether your organization satisfies the financially-related criteria for CFC eligibility specified in the CFC regulations. A copy of the submission of that Committee is attached to this notice. We cannot determine, on the basis of your submissions to date, whether or not these allegations of ineligibility have merit. In addition, it is unclear from your application what reliance, if any, your organization places on the financial information furnished regarding its affiliate bodies, and what significance, if any, should be attached to the fact that this information is estimated, uncertified, and unaudited. This hearing is intended to resolve the ambiguities that now exist on the record. Accordingly, we request that you bring to the hearing any and all financial data that addresses the points raised in the statements of the National Right to Life Committee.

To ensure a full and fair exposition of these issues, we have invited representatives of the National Right to Life Committee and other interested persons to attend this hearing, as well. At the hearing, your organization, the National Right to Life Committee, and other interested persons, will be given the opportunity to be heard orally, and any further written submissions will be accepted and made a part of the record upon which the Director will make his determination. All submissions, whether written or oral, should relate to the matters raised in this notice.

Sincerely yours,

Donald J. Devine
Director

national
right to life [illegible]
committee, inc.

August 31, 1983

Mrs. Betty H. Brake
Chairperson of the National
Eligibility Committee for the
Combined Federal Campaign
Office of Personnel Management
Washington,D.C. 20415

Dear Mrs. Brake,

We strongly object to the Planned Parenthood Federation of America's continued participation in the Combined Federal Campaign and urge the National Eligibility Committe members to vote against Planned Parenthood's membership in the 1983-1984 campaign.

Our objections are based on Planned Parenthood's failure to fulfill the requirements of the regulations governing the conduct of the campaign. We focus on specific evidence from Planned Parenthood's own application papers filed with the Office of Personnel Management that support our objections.

Any one of these objections taken alone would be sufficient grounds for exclusion, and we have listed seven such issues. The details with supporting copies of pertinent documents are provided in the two attached appendices. In brief, our objections are these:

1. Planned Parenthood failed to provide copies of the financial data required by the regulations. Specifically, the finances of the affiliates are listed in the "Combined Sources of Funds and Costs Report," but PPFA has never filed audits from those affiliates to support those figures. The affiliates supposedly have 83% of the income and 84% of the expenses, but there is no information to verify those figures. Therefore, PPFA is ineligible.

2. Planned Parenthood failed to satisfy the 50%/20% criteria in the regulations for federal and public support.

First, the organization failed to receive 20% of its income from the public. In the "Combined Sources of Funds and Costs Report" for 1982, PPFA lists a bogus category of public support of $4½ million of "in kind" income to affiliates. The category is not permitted under either the CFC regulations or the basic accounting guide used by CFC agencies. Also this "in kind" income to affiliates is completely unsupported by any audit or statement by PPFA's auditors. In addition, income through the CFC should not be used to determine eligibility for the CFC. When the CFC income and the bogus "in kind" income are subtracted, PPFA failed to meet the 20% criteria.

Second, PPFA failed to meet the criteria for receiving less than 50% of its income from the federal government. Listed under the "Revenue" section of the "Combined Sources of Funds and Costs Report" for 1982, PPFA shows 31% of its income from the federal government. However, grants for Medicaid and Medicare to the affiliates are incorrectly listed as non-federal income. Since both Medicaid and Medicare are largely federally funded programs, the income from them should be listed as federal income,but it is not. Planned Parenthood has never submitted audited financial records for its affiliates. Therefore, when the Medicaid and Medicare are added to the former category, the total federal income is over 70%, and well above the 50% limit.

3. Planned Parenthood has used deceptive advertising in the CFC literature and misdirects the proceeds from CFC into different programs than those listed in the prospective donor's booklets. PPFA tells donors that the contributions will be used in overseas programs when actually more than a third of the income goes to support the activities of domestic affiliates. Only the headquarters has overseas programs according to the application. Minutes from a Planned Parenthood board meeting in the PPFA 1983 CFC application give the details of the split with the domestic affiliates. This deception is directly contrary to both the spirit and the letter of the CFC regulations.

4. Planned Parenthood spokesmen have consistently misled the National Eligibility Committee during the last hearings about the use of the proceeds from the CFC. This objection we raise here is not the issue that was discussed at the time, but PPFA's statements about the use of CFC funds. In response to statements regarding PPFA's position on the abortion issue, PPFA spokesmen have maintained that the CFC income does not support any

abortion-related activities. These statements directly conflict with statements by PPFA president Faye Wattleton in a letter in the OPM files on the CFC. Mrs. Wattleton states that the CFC funds support "abortion-related" activities because the funds are used to support domestic PPFA affiliates and the International Planned Parenthood Federation (IPPF). This letter is dated in August, 1980, and the minutes from a PPFA board meeting in early 1982 show that the same arrangement is still in effect. The board minutes appear in PPFA's most recent application for the CFC. Clearly, PPFA spokesmen have misled the Committee about the use of CFC funds.

Last year at the National Eligibility Committee hearing, National Right to Life Committee raised additional objections that have never been addressed properly by either the Committee or OPM. Like the four objections above, they deal strictly with Planned Parenthood's failure to fulfill the terms of the CFC regulations. These objections are listed in full in Appendix B and are summarized briefly here.

5. The financial information submitted by Planned Parenthood about its international program is insufficient to justify particiation under the terms of the CFC regulations. PPFA applies as an international service agency but submits financial data for its domestic operations, which is irrelevant to eligibility for overseas work. Moreover, the international program is entirely funded with federal funds through the Agency for International Development; therefore, it far exceeds the limit for being less than 50% federally supported.

6. Planned Parenthood's international agency promotes abortion with federal funds, contrary to law. PPFA's Three Year Plan, submitted with its application for the CFC, specifically calls for promotion of abortion services abroad. Federal law prohibits using A.I.D. funds to promote abortion, yet PPFA's international program is entirely funded by A.I.D..

7. Funds raised by PPFA for domestic lobbying should not be listed under public support in order to justify participation as an international service agency. Much of the income from PPFA's direct mail campaigns results from letters asking specifically for money to lobby. This income is restricted and should not be applicable to the CFC criteria for public support for an

international service agency.

In conclusion, we strongly urge the National Eligibility Committee to reject Planned Parenthood's application for membership in the Combined Federal Campaign on the grounds that we have described above.

Sincerely yours,

Jean Doyle

Jean Doyle
President

Appendix A

STATEMENT
By The National Right to Life Committee
Before the National Eligibility Committee
For the Combined Federal Campaign
August 31, 1983

I. PLANNED PARENTHOOD FAILED TO PROVIDE COPIES OF FINANCIAL DATA REQUIRED BY THE REGULATIONS.

See Exhibit 1.

The regulations for CFC require all applicants file a "copy of the latest external audit by an independent certified public accountant." (CFC 950.407(f)(11). PPFA has never filed audits to verify the financial information in the "Combined Sources of Funds and Costs Report" as required. PPFA includes data from all its affiliates in its "Combined Sources of Funds. . ."report, but only files an audit for the headquarters organization that accounts for only 17% of income and 16% of expense for the organization as a whole.

Since the audits have not been filed, PPFA is ineligible to file for participation.

II. PLANNED PARENTHOOD FAILED TO SATISFY THE 50%/20% CRITERIA IN THE REGULATIONS FOR FEDERAL AND PUBLIC SUPPORT.

See Exhibit 1.

See Exhibit 2.

A. PPFA failed to receive 20% of its income from the public in 1982. In the "Combined Sources of Funds and Costs Report" for 1982, PPFA lists a bogus category of public support of $4.5 million of "in kind" income for its affiliates. This category of income is not permitted by either the CFC regulations or the basic accounting guide for CFC agencies. (CFR 950.409 and *Standards of Accounting and Financial Reporting for Voluntary Health and Welfare Organizations*, revised 1974, pages 19-21) The *Standards* speak strongly against listing "in kind" contributions because they are extremely difficult to evaluate in order to place a dollar value on them. Specifically, the *Standards* state: "The difficulties just cited seem to explain the almost universal omission from voluntary agencies' financial statements of any financial values for independently donated services." (page 20) In fact, Planned Parenthood's own auditors do not list them in the audit submitted with the application. Therefore, the bogus "in kind" income should be deleted from the income category.

In addition, proceeds from the CFC should not be used to justify participation in the CFC. When these two figures for "in kind" and CFC income are deducted from the total for public support, PPFA failed to meet the criteria of having more than 20% of its income from the public.

See Exhibit 1.

See Exhibit 3.

B. PPFA failed to meet the criteria for receiving less than 50% of its income from the federal government. Listed under the "Revenue" section of the "Combined Sources of Funds and Costs Report" for 1982, PPFA shows 31% of its income from the federal government. However, grants for Medicaid and Medicare to the affiliates are incorrectly listed as non-federal income. Since both Medicare and Medicaid are largely federally funded (listing for Health Care Financing Administration in U.S. Government Manual, 1982-1983, for example), the income from them should properly be listed as federal income, but it is not. PPFA has never submitted audited financial records for its affiliates that would verify those figures. Therefore, when Medicaid and Medicare are added to the federal goverment funding category, the total federal income is over 70%, and well above the 50% limit.

III. PLANNED PARENTHOOD HAS USED DECEPTIVE ADVERTISING IN THE CFC CAMPAIGN LITERATURE AND MISDIRECTS THE PROCEEDS FROM CFC INTO DIFFERENT PROGRAMS THAN THOSE LISTED IN THE DONOR'S BOOKLET.

See Exhibit 4.

See Exhibit 5.

Planned Parenthood tells donors that the contributions will be used in international programs, for services in "Latin America, Asia and Africa." (samples from donor's booklets in Washington, D.C., New York City, and Boston, for example) Actually, more than a third (35%) goes to support PPFA's domestic affiliates, and it is used as unrestricted income by them. The mechanism for this is in the form of a rebate by the national headquarters, as described in an attachment to the minutes of a PPFA board meeting of June 5, 1982. In the agreement, 35% of the CFC income in a city will count as a partial payment of the local affiliate's annual dues (called "Fair Share" in the memo).

Therefore, CFC income pays local, domestic PPFA affiliates' dues to the headquarters. CFC contributors give money to local affiliates, but they are led to believe that they are giving for international programs.

This deception is directly contrary to both the spirit and the letter of the CFC regulations. CFR 950.403(b) specifically states that "Funds contributed to such organizations by Federal personnel must be effectively used for the announced purposes of the voluntary agency."

See Exhibit 6.

PPFA has had this arrangement with its local affiliates in place for several years at least, and it conducted the 1982-1983 campaign with the intent of misdirecting funds given for international programs into domestic projects.

PPFA should be ineligible for violating the regulations.

IV. PLANNED PARENTHOOD SPOKESMEN HAVE MISLED THE NATIONAL ELIGIBILITY COMMITTEE FOR CFC ABOUT THE USE OF THE PROCEEDS FROM THE CAMPAIGN.

We raise this objection not to the political issue that was discussed during the eligibility hearing, but what PPFA spokesmen stated that the proceeds of the CFC were used for.

See Exhibit 6.

In response to statements regarding PPFA's position on the abortion issue, PPFA spokesmen maintained that the CFC income did not support any abortion-related activities. These statements directly conflict with statements by PPFA president Faye Wattleton in a letter in August, 1980 in which she acknowledged that the CFC funds supported "abortion-related" activities by PPFA affiliates and the International Planned Parenthood Federation. This letter is part of the OPM files for the 1980 CFC campaign.

See Exhibit 5.

The minutes from the PPFA board meeting in June, 1982 show that the same arrangement of splitting the proceeds with local affiliates and IPPF is still in effect. Clearly, PPFA spokesmen have misled the Committee about the use of CFC funds.

NOTE: EXHIBITS 2, 4, AND 5, TO APPENDIX A ARE NOT REPODUCIBLE FOR PUPOSES OF THIS PRINT AND ARE RETAINED IN SUBCOMMITTEE FILE.

Exhibit 1, Appendix A

Planned Parenthood "Combined Sources of Funds and Costs Report" for the year ending 12/31/82

Note: The areas of controversy are highlighted. Number 1 is the bogus category of "in-kind" contributions, which is not allowed under the CFC regulations.

Number 2 is the listing of CFC income that should not be included in determine eligibility for CFC.

Number 3 are the Medicaid and Medicare revenues from the federal government that should be included in the total of federal funds.

12-16

PLANNED PARENTHOOD-WORLD POPULATION
(Planned Parenthood Federation of America, Inc.)

COMBINED SOURCES OF FUNDS AND COSTS REPORT
(Including National Headquarters and Affiliates)

For the Year Ending 12/31/82

Public Support	Nat'l HQ (Audited)	Affiliates (Estimated)	Total	% Of Income
Received Directly:				
Contributions-unrestricted	8,755,756	22,111,200	30,866,956	15.41
Bequests & Restricted Grants	1,877,048	4,233,000	6,110,048	3.05
In-Kind (Material, Space, Servs.)	-	4,581,600	4,581,600	2.29
Subtotal	10,632,804	30,925,800	41,558,604	20.75
Received Indirectly:				
United Way	-	1,477,400	1,477,400	.74
Combined Federal Campaign/ISA (Net of Related FR exp. $41,684)	789,593	-	789,593	.39
Other Contributions	-	149,400	149,400	.07
Subtotal	789,593	1,626,800	2,416,393	1.21
Total Public Support	11,422,397	32,552,600	43,974,997	21.96
Revenue:				
Grants from Fed Gov't Agcs. (incl. in-kind)	20,274,690	42,180,000	62,454,690	31.18
Grants from State or Local Gov't Agcs. (incl. Medicaid)	-	31,820,000	31,820,000	15.88
Program Service Fees (incl. Medicare)	33,378	46,700,000	46,733,378	23.33
Gain from Sale of Products	326,772	647,400	974,172	.49
Dues to Nat'l from Affils.	2,047,310	-	2,047,310	1.02
Rebates to Aff'l from Nat'l	-	100,000	100,000	.05
Investment Income	217,886	2,250,000	2,467,886	1.23
Gain on Investment Transactions	(4400)	400,000	395,600	.20
Other Income	-	9,350,000	9,350,000	4.67

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Exhibit 3, Appendix A

"Medicare" and "Medicaid" as federall
funded programs

Source: The United States Goverment Manual 1982/1983
Office of the Federal Register, GSA

Health Care Financing Administration

[For the Health Care Financing Administration statement of organization, see Federal Register of Nov. 19, 1981, 46 FR 56911]

The Health Care Financing Administration (HCFA) was created by the Secretary's reorganization of March 8, 1977, as a principal operating component of the Department.

HCFA places under one Administration the oversight of the Medicare and Medicaid programs and related Federal medical care quality control staffs. The following major programs are directed by HCFA.

Medicare The Medicare program provides basic health benefits to recipients of social security and is funded through the Social Security Trust Fund. HCFA is concerned with the development of policies, procedures, and guidance related to the program recipients, the providers of services such as hospitals, nursing homes, and physicians, the intermediaries who dicate claims, and the effective rdination with related Department programs, activities, and organizations which are closely related to the Medicare program.

Medicaid The Medicaid program through grants to States provides medical services to the needy and the medically needy. HCFA is responsible for developing approaches toward meeting the needs of those who cannot afford adequate medical care; providing technical assistance to States and local organizations to extend the scope and content and improve the quality of medical care programs for the needy; and serves as the clearinghouse for nformation relating to the program.

Quality Assurance An HCFA quality ssurance focal point was established to arry out the quality assurance provisions f the Medicare and Medicaid programs titles XVIII and XIX, 79 Stat. 291 and 43; 42 U.S.C. 1395 and 1396), and naternal and child health legislation (title , 81 Stat. 921; 42 U.S.C. 701–731) of he Social Security Act, as amended. This esponsibility includes implementation of e Professional Standards Review Organization (PSRO) program and the End-Stage Renal Disease (ESRD) program, both of which were authorized by the 1972 amendments to the Social Security Act (49 Stat. 620). It also includes the development and monitoring of health and safety standards for providers of health care services, which were authorized under earlier Medicare and Medicaid legislation.

As a means of meeting these national objectives, the PSRO provisions of section 249F of the Social Security Amendments of 1972 (86 Stat. 1429; 42 U.S.C. 1301) require that the Secretary of Health and Human Services establish and support a nationwide network of local, physician-sponsored PSROs. Through the application of ongoing peer review, the PSROs are expected to assure that quality inpatient health care services are provided to beneficiaries and recipients of Medicare, Medicaid, and Maternal and Child Health programs at a reasonable cost.

The provisions of section 299(I) of the Social Security Amendments of 1972 (86 Stat. 1463; 42 U.S.C. 426), known as the "Kidney Amendment," extend Medicare coverage under the Social Security Act to virtually all persons with a particular condition—End-Stage Renal Disease. The law authorizes the Secretary to limit reimbursement under Medicare to facilities that meet established standards.

The development and implementation of health safety standards for providers of care in Federal health programs dates from the 1965 Medicare amendments to the Social Security Act.

Long-Term Care The Long-Term Care program is another aspect of the quality assurance effort. This program serves as a focal point for Long Term Care (LTC) for the aged and the chronically ill and for nursing home affairs. This involves providing policy direction and coordination of LTC activities throughout the Department, the development, determination, and enforcement of LTC

EXHIBIT 6

Excerpt from Planned Parenthood 1980 CFC Application Showing Distribution of Proceeds Between Local and National Affiliates; including use of the funds to fund abortion-related activities

Source: OPM files, copy of CFC application by Planned Parenthood for 1980; copy of letter from PPFA president, Faye Wattleton, to the executive director of the International Service Agency group

Planned Parenthood - World Population 810 Seventh Avenue New York, New York 10019 (212) 541-7800
HEADQUARTERS OF Planned Parenthood Federation of America, Inc.
A MEMBER OF THE INTERNATIONAL PLANNED PARENTHOOD FEDERATION

August 7, 1980

TO: Richard J. Leary, ISA National Executive Director

FROM: Faye Wattleton, PP-WP President

SUBJECT: PP-WP Position on Abortion and Use of ISA/CFC Funds

CABLE
PARENTHOOD N.Y.

Founded by
Margaret Sanger
1879-1966

CHAIRPERSON
Frederick C. Smith

TREASURER
Nancy Young Duncan

SECRETARY
AND ASSISTANT TREASURER
Diane Amble

I know that many ISA regional directors are questioned continually about the use of ISA/CFC funds for abortion and abortion-related services, and that they have tried to answer them as best they can based on the information we have provided in the past. It appears, however, that further clarification is needed regarding the use of ISA/CFC funds. Enclosed is a statement which I hope is more definitive and useful for these particular situations.

Appendix B

STATEMENT
By the National Right to Life Committee
Before the National Eligibility Committee
For the Combined Federal Campaign
By James Bopp, Esq.
July 23, 1982

I. THE FAMILY PLANNING INTERNATIONAL ASSISTANCE (FPIA) PROGRAM SHOULD ESTABLISH ELIGIBILITY ON ITS OWN MERITS.

We recommend that the Committee judge the eligibility of the Family Planning International Assistance (FPIA) program on its own merits as an international service agency separate from the domestic operations of the headquarters unit of Planned Parenthood-World Population and the Planned Parenthood affiliates. Planned Parenthood is asking the CFC to fund FPIA as an international agency, but it is using financial data from its domestic operation to justify its eligibility.

In relation to this observation, we would invite the Committee's attention to the following three points:

A. FINANCIAL DATA ON PLANNED PARENTHOOD'S DOMESTIC OPERATIONS IS IRRELEVANT TO ELIGIBILITY AS AN INTERNATIONAL AGENCY.

In the application, Planned Parenthood focuses on its local domestic affiliates' medical service, fundraising, and participation in local community affairs and the United Way as a basis for proving eligibility under national scope and public acceptance. In the application, the FPIA program receives only a relatively brief mention while the discussion focuses on domestic national and local activity. However, these are irrelevant to activities overseas, which are handled solely by FPIA out of New York.

B. THE FPIA SHOULD SUPPLY MORE FINANCIAL INFORMATION ABOUT ITS OPERATIONS BEFORE BECOMING ELIGIBLE.

We note that Planned Parenthood's application provides several sets of financial data about its operations, but none of them identify how well the FPIA, the international service arm, meets the financial eligibility criteria. The audit for 1981 describes the finances of the headquarters unit in New York but does not include the affiliates. On the other hand, the Source of Funds and Costs Report gives data for the entire organization and does include the affiliates. Neither one, however, provides either a complete

See
Exhibit 1.

list of the income and expenses for the FPIA or a list of the programs carried out by that agency. No data is supplied to show that the Family Planning International Assistance program meets the criteria of CFR 950.405(a)(2) about receiving less than 50 percent of its funding from the Federal Government and more than 20 percent from direct and/or indirect contributions.

C. FPIA IS ALMOST ENTIRELY FEDERALLY FUNDED, WHICH RAISES QUESTIONS ABOUT ITS ELIGIBILITY UNDER THE 50/20 GOVERNMENT AND PUBLIC FUNDING CRITERIA.

When evaluating the FPIA financial data, we would direct the Committee's attention to "income" in Planned Parenthood's audit for 1981 which lists almost $11 million in grants from governmental agencies, "substantially from the Agency for International Development." Under "expenses," Planned Parenthood lists $12 million for "international assistance family planning," of which 98 percent is "restricted" funds, presumably from the Federal Government. Thus, it would appear that Planned Parenthood's international program is totally made up of Federal Government funds from the Agency for International Development and contributions from the Combined Federal Campaign.

See Exhibit 2.

We suggest that the Committee request that the Family Planning International Assistance provide both a Sources of Costs and Funds Report and a summary of financial activity by program income and expense."

We also suggest that the "restricted" funds be described in more detail to determine whether they are for either domestic or international programs.

II. QUESTIONS ARISE ABOUT WHETHER PLANNED PARENTHOOD MEETS THE 50/20 CRITERIA FOR GOVERNMENT AND PUBLIC SUPPORT.

If the Committee does not wish to evaluate the Family Planning International Assistance separately from the parent organization of Planned Parenthood, we would again recommend that the affiliates' operations not be included in any assessment of eligibility. We would also invite the Committee's attention to the issue of whether the Planned Parenthood headquarters organization, taken by itself, meets the requirements of CFR 950.405(a)(2)(iii) regarding the 50/20 split. In evaluating this requirement, we would point out the following four points:

A. FINANCIAL INFORMATION FROM PLANNED PARENTHOOD'S LOCAL DOMESTIC AFFILIATES SHOULD NOT BE INCLUDED IN THE HEADQUARTERS REPORTS BECAUSE FPIA WORKS SOLELY IN NEW YORK WITH NO FORMAL ASSOCIATION WITH DOMESTIC PROGRAMS.

According to the application, the Family Planning International Assistance program is operated solely by the Federation's headquarters.

B. THE PPFA HEADQUARTERS DOES NOT MEET THE GOVERNMENT SUPPORT CRITERIA BECAUSE IT IS OVER 50% FEDERALLY FUNDED.

According to the 1981 audit, federal government funds clearly make up over 50 percent of the Federation headquarters' income.

C. CFC CONTRIBUTIONS SHOULD NOT COUNT IN MEETING ELIGIBILITY CRITERIA.

In checking to determine whether at least 20 percent of the headquarters' income comes from direct or indirect public contributions, it seems reasonable that income from the Combined Federal Campaign should not be used to determine eligibility for the Campaign.

D. PPFA'S DOMESTIC RESTRICTED INCOME SHOULD NOT APPLY TOWARD ESTABLISHING INTERNATIONAL ELIGIBILITY.

Much of the "direct contributions" listed in the audit came in the form of "restricted" funds, and we suggest that the Committee determine what part of those funds is for international operations and what part is restricted to domestic operations. Since the application for the CFC is being made by an international agency, we suggest that funds earmarked as restricted to domestic operations be subtracted from the total income when the 20 percent eligibility criteria is checked.

Substantial amounts of "restricted" income and expense in the 1981 audit have no notation as to which part should be attributed to international operations. Obviously, some of it is being used for domestic operations. For example, it should be noted that the 1980 audit stated that approximately $400,000 of the restricted funds were reserved to establish a loan fund to pay for abortions, under the name of the Abortion Fund. In testimony before Senator Denton's committee in March, 1981, Faye Waddleton, the president of Planned Parenthood, described how the money was being used to pay for abortions.

See Exhibit 3.

III. THE FPIA, BY ITS OWN ADMISSION, PROMOTES ABORTION WITH U.S. AID FUNDS CONTRARY TO LAW.

We would call to the Committee's attention the statutory prohibition against using the U.S. Agency for International Development funds to promote abortion abroad. (U.S. Department of State, Agency for International Development, "A.I.D. Policies Relative to Abortion-Related Activities." Policy

See Exhibits 4,5,6.

Determination, PD-56, June 10, 1974.) As noted in their application, the Family Planning International Assistance, Planned Parenthood's chief international program, is funded almost entirely by the U.S.A.I.D..

See Exhibit 7.

We would then point to goal #5 in Planned Parenthood's "Three Year Plan," enclosed with its application, which specifically states its organizational objective from 1982 to 1984 to "support abortion and other services abroad which cannot be directly financed by the U.S. Government."

If the Family Planning International Assistance program is U.S.A.I.D.-funded and CFC-funded, then Planned Parenthood itself is stating that it is using those funds to promote abortion. This conflicts directly with CFR 950.403(a) which requires that CFC agencies provide services that are consistent with the policies of the U.S. government.

Moreover, we note that Planned Parenthood promotes the use overseas of drugs such as Depo-Povera that is considered unsafe by the Food and Drug Administration in the United States. Use of these drugs on women of developing countries is tantamount to experimentation that would be considered illegal in this country.

IV. FUNDS RAISED BY PLANNED PARENTHOOD FOR DOMESTIC LOBBYING SHOULD BE CONSIDERED "RESTRICTED FUNDS" THAT DO NOT APPLY TOWARD ESTABLISHING INTERNATIONAL ELIGIBILITY.

See Exhibits 8,9.

We would invite the Committee's attention to the copy of the complaint filed by our General Counsel in Planned Parenthood's CFC file regarding a fundraising letter from Planned Parenthood Federation of America, in which it solicited tax-deductible funds to lobby, contrary to law. The IRS identified that the contributions were not tax-deductible.

We suggest that the Committee examine Planned Parenthood's fundraising practices to determine whether it has presented itself factually and accurately and to what extent the restricted contributions given for lobbying have been included in the "direct contributions" from the public in the financial report.

We believe that funds solicited from the public for lobbying should be considered "restricted funds" for domestic operations and are not applicable to meeting the CFC criteria for 20 percent public contributions as an international agency.

Exhibits with National Right to Life Committee Statement on Planned Parenthood's Application for the Combined Federal Campaign

Section	Exhibit	Item
I-B	1.	Planned Parenthood "Source of Funds and Costs Report" 1981
I-C	2.	Notes from Planned Parenthood's 1980 Audit on Grants from A.I.D.
II-D	3.	Notes from Planned Parenthood's 1980 Audit on the Abortion Loan Fund, Testimony from Faye Waddleton about the use of the Fund before the Senate Committee on Labor and Human Services, March 31, 1981
III	4.	"A.I.D. Policies Relative to Abortion-Related Activities," June 10,1974, Policy Determination PD-56
	5.	Excerpt from AID Handbook, December 18, 1980 on abortion policy
	6.	News Release, January 11, 1982 from A.I.D. regarding abortion policy
	7.	Excerpts from Planned Parenthood's Three Year Plan, for 1982-1984, on abortion promotion overseas.
	8.	Fundraising letter from Faye Waddleton stating that contributions for lobbying are tax-deductible.
	9.	Letter from IRS to Representative H. Caldwell Butler (VA.) stating that contributions given for lobbying are not tax-deductible.

NOTE--EXHIBITS 1, 3, 4, 5, AND 7 ENUMERATED ABOVE ARE NOT REPRODUCIBLE FOR THE PURPOSES OF THIS PRINT AND ARE RETAINED IN THE SUBCOMMITTEE FILE.

[illegible]

Notes to Financial Statements

EXHIBIT 2

Enclosure K/I-1 to Planned Parenthood CFC Application FY 1982-[illegible]
Financial Statement with Audit for December 31, 1980

During 1978, the Federation purchased computer equipment, with a present value of $275,000, under a capital lease requiring 60 monthly payments of $5,875 through September, 1983. Included in equipment and in accumulated amortization and depreciation at December 31, 1980 is $306,800 and $123,750, respectively, which relates to this equipment. Future minimum lease payments and the amount of imputed interest thereon is as follows:

	Minimum lease payment	Imputed interest
1981	$ 70,500	14,674
1982	70,500	8,792
1983	52,875	2,361
	193,875	25,827
Less imputed interest	25,827	
Present value of obligation under capital lease	$ 168,048	

(7) Grants from the Agency for International Development (A.I.D.)

The Federation has received grants from A.I.D. for the development and support of the family planning programs of Church World Services and other charitable organizations in less developed countries.

The grants provide that program administrative charges (indirect costs) are to be initially billed at provisional rates and final reimbursement for indirect costs are to be based upon actual costs incurred. The final rates, developed by the Federation, are subject to examination by and negotiation with A.I.D.

During 1977, a negotiated agreement was reached between the Federation and A.I.D. for grants covering the period January 1, 1971 through December 31, 1974 and revised provisional rates were established effective retroactively as of January 1, 1975 as follows:

5% on subgrant costs; and

27% on other direct costs, less commodities, freight and certain travel payments.

These provisional rates continued in effect through December 31, 1979. The revised provisional rates for 1980 are 5% and 18.95%.

During 1979, management submitted its proposals for final rates to A.I.D. for the years ended December 31, 1975 and 1976. These proposals were examined by A.I.D. and certain matters remain unresolved which are subject to negotiations with A.I.D. A final settlement regarding the recovery of program administrative charges under A.I.D. grants for the six years subsequent to December 31, 1974 is not presently determinable.

PLANNED PARENTHOOD FEDERATION OF AMERICA, INC.

Notes to Financial Statements

EXHIBIT 3

Enclosure K 1-1 to Planned Parenthood CFC Application FY 1982-3
Financial Statement with Audit for December 31, 1980

(4) Loan Funds

An abortion loan fund was created in part by a grant from a charitable trust in the amount of $400,000 which is to provide financing to Federation affiliates or similar organizations for abortion or pregnancy termination clinics organized by such organizations. In accordance with the terms of the grant, additional funds for such financing, equal to 150% of the grant amount, were to be provided by the Federation either through public donations or bank financing. Accordingly, a $400,000 revolving line of credit was obtained, and the Board of Directors has authorized the President to increase this line to $600,000 as needed. At December 31, 1980, $33,000 was drawn down against this line of credit, bearing interest at an average rate of 13.56% and maturing on April 14, 1981.

In 1977, the Federation received an interest free loan from a charitable trust in the amount of $75,000 which is available to provide financing through March 31, 1981 to the Federation's affiliates or similar organizations for voluntary sterilization clinics. As a condition for this loan, the Federation must match these funds. Approval to apply up to $150,000 of the abortion loan funds to sterilization loans has been received.

(5) Funds Designated by the Board of Directors

The following is a summary of activity of the designated funds for the year ended December 31, 1980:

Balance, beginning of year		$ 1,812,483
Additions:		
Bequests received	$ 537,281	
Investment income	37,855	575,136
		2,387,619
Deductions:		
Funds utilized for current operations	324,550	
Leasehold improvements and equipment acquisitions	158,108	
		482,658
Balance, end of year		$ 1,904,961

(6) Leases

The Federation has an outstanding commitment for a long-term lease for its office facilities expiring June 18, 1983, at an annual rental of $364,339 plus utilities and real estate tax assessment through June 30, 1980, at which time the annual rental became $547,910 plus utilities and real estate tax assessments in excess of amounts for the base year ended June 30, 1980.

News Release
From the Office of Public Affairs
Agency for International Development, Washington, D.C. 20523

EXHIBIT 6

0093
Contact: Rich Miller
(202) 632-4700

FOR RELEASE
MONDAY, JANUARY 11, 1982

NEWS RELEASE

STATEMENT BY M. PETER McPHERSON
Administrator, Agency for International Development
January 11, 1982

In light of recent news reports concerning a study which advocates the use of abortion in foreign assistance programs, I would like to make the following statement:

The Agency for International Development and other agencies of the U.S. government involved with foreign aid do not have and will not provide funds for the performance of abortions, for research on abortion methods and procedures, or for training to perform abortions. I have assured Congress and the President that our Agency will not advocate or endorse abortion as a means for controlling population growth. All studies and research which conclude to the contrary are in direct contradiction to Reagan Administration policy.

We remain committed to that policy in practice and philosophy.

# # #

Planned Parenthood®
Federation of America, Inc.
Planned Parenthood-World Population

810 Seventh Avenue
New York, New York 10019
212/541-7800

EXHIBIT 8

The Moral Majority doesn't think you've been living a righteous enough life. So they've decided to use the U.S. Constitution to make you shape up by legislating your morality.

They've introduced their so-called Human Life Amendment which says the unborn fetus cannot be aborted from the moment of fertilization.

Sounds like yet another attempt to turn back the clock on abortions, right?

Wrong! It's much worse. The HLA would outlaw the IUD and some other safe birth control methods. It would turn back the clock on your right to plan your own family. And on your right to privacy, because it would require the government to police your bedroom.

What is so terrifying is that it stands a good chance of passage. If that prospect scares you too, maybe you'll support this all-out war against the Radical Religious Right.

Dear "Fellow Sinner":

You may not be aware of it, but you, your family and your friends are what's wrong with America these days. I am too.

Because all these years we've been under the impression that it was OK not to have children if we didn't want to, or to limit the size of our families. We thought that what we did in our bedrooms was nobody else's business -- especially not the government's.

Now come the self-appointed custodians of the Truth and their grand design for their image of nineteenth-century America. They are absolutely certain of what is right and what is wrong; now they're going to tell you. They're determined that you will listen and act accordingly, under penalty of law.

There have always been plenty of people who want to impose their values and religious beliefs on you and everyone else. Until recently, you were free to ignore them and decide for yourself what is right for you and your family. But now your rights are threatened. Now these guardians of other people's morals have political clout.

Don't get me wrong. There are people who hold deep religious beliefs which forbid abortion. But they conduct their own lives according to their beliefs and do not attempt to impose their beliefs on the rest of us. Those are not the people who pose a danger to individual rights.

(over, please)

But right now there is a zealous minority which is using whatever political power they can muster to make their point of view prevail.

We must oppose these zealots. If we remain passive, they will surely win.

They fervently believe they were put into office to "protect" our nation by cleaning up the American Sodom and Gomorrah. And if you don't see the light -- the light revealed to them -- they're determined to declare you a criminal.

> For years, Planned Parenthood -- the oldest and most respected family planning organization in America -- has fought for a woman's right to conceive or not conceive, according to her personal preferences and the dictates of her conscience.
>
> Being alarmist has never been our style. Instead, we have worked quietly and diligently to gather the facts and make accurate information on birth control freely available to everyone who wants it.
>
> We've backed research for safer, more effective birth control methods. We offer family planning counseling services to two million people -- mostly poor -- who otherwise have no access to them.

But, today, the alarm must not only be sounded but shouted because, suddenly, self-moralizing forces are dangerously close to winning control. They've decided, by means of a so-called Human Life Amendment, to sweep away over sixty years of medical progress and a few centuries of enlightenment. And to severely limit every American's freedom of choice and right to privacy in this most personal matter.

> Because this unholy alliance of religion and politics managed to defeat many of the legislators who would have opposed it, HLA could cruise smoothly through Congress, despite the two-thirds vote required to pass a Constitutional Amendment. Or a "Human Life Statute," drafted in an attempt to circumvent the constitutional amendment process, could pass Congress by a simple majority.
>
> If the amendment passes Congress, then it will be up to the states, twenty-one of which have already passed pro-HLA resolutions. Once two-thirds (34) of the states vote to ratify, which could happen as soon as mid-1982, the Twenty-Sixth Amendment -- the Human Life Amendment -- will be law. And the New Right and their radical religious allies will have succeeded in forcing you to live your life and plan your family the way they think you should. They will have accomplished that which our Founding Fathers so greatly feared: they will have merged church and state and imposed their prejudices on the entire country thus eliminating religious freedom as we know it. All this despite the fact that 80% of Americans oppose prohibition of abortion.

(next page, please)

What then? For starters, the HLA would substitute cold, impersonal law for the medical advice of a woman's personal physician. It would prevent the use of the IUD and some types of the pill because they prevent the implantation of the fertilized egg.

Which means that you and the rest of us will become criminals if we continue to use particular birth control methods. For you and countless others, this will be a source of enormous physical pain, frustration and anger. But for some, the consequences will be far more tragic. Because this is what will happen if the HLA becomes law:

** No abortions for women who have been exposed to X-rays or medication which have been proven to cause fetal deformities or brain damage.

** No abortion, for example, for a 14-year old girl impregnated by her father.

** No abortion for a woman who already has several children and whose husband's brutality has caused her severe physical and emotional problems.

** No abortion for a high-school student who has no prospect for a stable home and whose pregnancy would end her chance for an education.

** No medically safe abortions -- a situation which would create a climate for back-alley butchery, and dangerous self-induced procedures of desperate women.

** The HLA would force women to flee to foreign countries because their individual freedom for a medically advised abortion had been denied -- an ironic twist of history for a nation founded to protect the individual.

This is the vision of America that would be forced on us all. The self-appointed moralists believe that an unwanted pregnancy -- with all its implications and potential complications -- is the penalty that must be exacted from a woman in exchange for an act of love. Because after all, isn't punishment due -- aren't women to blame for stirring up sinful thoughts in the hearts of men? It is a vision of the Dark Ages, of the Inquisition, of a time no person -- man or woman -- should have to face.

The forces we must mobilize against are made up of people who are unwavering in their belief that they are holier than thee or me.

Perhaps now you understand why we're so alarmed. And why Planned Parenthood has concluded it must mobilize -- as it has never mobilized before -- for this war against ignorance and repression.

(over, please)

We're raising a $3.6 million emergency fund to finance a massive campaign to alert, inform and organize the public on this crucial issue. This unprecedented effort -- known as the Public Impact Program -- will employ a national television and newspaper advertising campaign as well as a highly organized grassroots lobbying effort in key states.

If the Public Impact Program is to succeed, it needs your generous support. Today.

The questions you must ask yourself are these: are you going to allow the "Moral Majority" to pervert the Constitution in order to take control of your life . . . take away your personal liberty, your freedom of choice, your right to plan your own family, your right to control your own destiny?

All in the name of their God? A God they assert has assured them that they are right. A God that has instructed them to wage war on personal rights, on the U.S. Constitution, on anyone else who refuses to accept their beliefs.

Are we going to let them cloak themselves in righteousness and nationalism while taking the first critical step toward imposing a religious dictatorship on America?

Your way of life is at stake. The very lives of countless unfortunate women are at stake -- women the Religious Right would offer up as sacrifices to their own religious beliefs.

We can't let it happen. They must be stopped. We need your help desperately -- and believe me, the word "desperate" doesn't overstate the case. Let me suggest a contribution of $20, but please don't feel limited by that. We need as much as you can give.

Sincerely,

Faye Wattleton

Faye Wattleton
President

P.S. Your contribution in support of Planned Parenthood's efforts to stop the Human Life Amendment is tax-deductible.

FW/rmc

I'm angry, too.

The Religious Right must be stopped: the HLA must be defeated. I realize it will be defeated only if we succeed in overcoming apathy and alert the majority of Americans to this threat. Please use my tax-deductible contribution as I've indicated below, in this crucial battle to protect my freedom of choice and my right to privacy against those who would pervert the U.S. Constitution to force their beliefs on me and my family.

☐ $20 ☐ $25 ☐ $30 ☐ $50 ☐ $100 ☐ $250 ☐ $500 ☐ $1000 ☐ $2500 ☐ Other $________

A copy of the last report filed with the New York Department of State may be obtained by writing to the New York Department of State, Office of Charities Registration, Albany, New York 12231, or to Planned Parenthood Federation of America, Inc.

Please make corrections to your name and address on the label

Please return this form, with your check made out to Planned Parenthood Federation of America, *in the postage-paid reply envelope.* ***Your contribution is tax-deductible***

Planned Parenthood Federation of America, Inc. / 810 Seventh Avenue, Box 5687 / New York, New York 10249

Internal Revenue Service Department of the Treasury

Washington, DC 20224

EXHIBIT 9

Person to Contact:
Robert A. Berkovsky
Telephone Number:
(202) 566-3626
Refer Reply to:
T:I:I:3:2
Date: NOV 17 1981

The Honorable M. Caldwell Butler
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Butler:

This is in reply to your letter dated October 16, 1981, in which you enclosed a letter from your constituent, Mr. John C. Kepley. Mr. Kepley enclosed a letter from the Planned Parenthood Federation of America, Inc., soliciting funds for their Public Impact Program. The Public Impact Program is described as an emergancy fund to finance a campaign to educate the public and lobby for defeat of the passage of the proposed Human Life Amendment. The letter from Planned Parenthood states that contributions sent to support Planned Parenthood's efforts to stop the Human Life Amendment are tax-deductible.

Your constituent inquires: (1) whether charitable organizations may solicit funds for a political purpose; (2) whether such contributions are tax deductible; and (3) whether a charitable organization that solicits funds for a political purpose may maintain its tax-exempt status. We believe the following general information will be helpful to your constituent.

Section 170(a) of the Internal Revenue Code provides, subject to certain limitations, a deduction for contributions and gifts to or for the use of organizations described in section 170(c), payment of which is made within the taxable year.

Section 170(c)(2) of the Code defines a charitable contribution, in part, as a contribution to or for the use of a domestic corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and which is not disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation, and which does not participate or intervene in any political campaign on behalf of any candidate for public office.

Generally, section 501(a) of the Code exempts from taxation organizations described in section 501(c). Section 501(c)(3) refers, in part, to a corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation (except as otherwise provided in section 501(h)), and which does not participate or intervene in any political campaign on behalf of any candidate for public office.

The Honorable M. Caldwell Butler

Section 501(h)(1) of the Code provides, generally, that exemption from taxation under section 501(a) shall be denied to an organization otherwise entitled to the exemption if a substantial part of its activities consists of carrying on propaganda or otherwise attempting to influence legislation, but only if the organization normally makes expenditures for the purpose of influencing legislation in excess of certain ceiling amounts. Section 501(h) applies to a particular organization only if elected by the organization. If section 501(h) is not elected, the general rules of 501(c)(3) apply with regard to influencing legislation, that is, no substantial part of the activities of a tax exempt organization may be the carrying on of propaganda or otherwise attempting to influence legislation.

The Service's position regarding the deductibility, under section 170 of the Code, of contributions earmarked for use in influencing specific legislation is set forth in Rev. Rul. 80-275, 1980-2 C.B. 69. Under the facts set forth in the revenue ruling, an organization exempt from taxation under section 501(c)(3) and described in section 170 became concerned with proposed legislation under consideration in the United States Congress. The organization mailed out literature that described the proposed legislation and requested contributions to be used to lobby members of Congress to help defeat it. The revenue ruling holds that a deduction is not allowable under section 170 for contributions to the organization that were earmarked for use in, or in connection with, attempting to influence the proposed legislation.

In summary, there is no absolute prohibition against an exempt organization soliciting and using funds to influence legislation. However, under certain circumstances, an organization's exemption from taxation may be revoked for attempting to influence legislation or for making expenditures for that purpose. Even though an organization is described in section 170(c)(2) of the Code, contributions to it which are earmarked for use in influencing specific legislation are not deductible.

We hope this information is helpful to your constituent.

Sincerely yours,

Anthony Manzanares, Jr.

Chief, Individual Income Tax Branch

APPENDIX 19

STATEMENT OF PLANNED PARENTHOOD
IN RESPONSE TO
DIRECTOR DEVINE'S "TECHNICAL" QUESTIONS

September 7, 1983

INTRODUCTION

The following statement addresses all of the nine issues raised by OPM as constituting the entirety of the alleged "technical" questions about Planned Parenthood's CFC eligibility. The facts make abundantly clear that Planned Parenthood meets all technical requirements.

By submitting this statement, Planned Parenthood does not waive any of its objections to Planned Parenthood being singled out for this procedure.

1. What agency is applying: Planned Parenthood Federation of America, Inc. (PPFA), or the affiliates and PPFA combined?

Planned Parenthood Federation of America, Inc., under its trademark Planned Parenthood-World Population, is the organization which has participated in the CFC each year since 1968. The bulk of CFC receipts are used for overseas programs of PPFA.

As with many other American charitable organizations, Planned Parenthood is organized on a federated basis, with a national headquarters organization, PPFA, and some 190 separately incorporated and largely autonomous local affiliates.

Many other CFC participants are similarly organized, and indeed the regulations so recognize. For example, section 950.403(c)(1) speaks of an organization "with a national board of directors that represents its constituent parts and exercises close supervision over the operations and fundraising policies of any local chapters or affiliates." This is an accurate description of PPFA's relationship to the affiliates.

The regulations are not entirely clear whether the technical requirements of the so-called "50% or 20%" test are to be applied only to the national organization or to include the affiliates as well. In Planned Parenthood's case, however, the question is moot, since that test is met at both levels of Planned Parenthood's organization.

2. Affiliates financial data.

a. Why was it submitted at all?

Regulation section 950.407(f)(12) requires that the special financial information that is to be submitted for purposes of the CFC application "must cover the most recent fiscal year and represent a consolidated statement of national and affiliate income and expenditures." (Attached) In accordance with this requirement, and with its practice for many years in the past (and we believe with the practice of many other applicant organizations) Planned Parenthood therefore submitted the required financial information not only for the national headquarters organization but for its affiliates as well.

b. Why (or in what sense) is the data "estimated"?

As explained in response to the next question, all Planned Parenthood affiliates maintain accounts and publish financial statements which are audited in accordance with generally accepted accounting principles. In practice this means they comply with the Standards for Accounting and Financial Reporting for Voluntary Health and Welfare Organizations ("Standards") referred to in the regulations. Planned Parenthood's Bylaws require that affiliate accounts be audited in accordance with "AICPA guidelines." Those standards, as set forth in the AICPA's revised industry audit guide, Audits of Voluntary Health and Welfare Organizations, are substantially the same as the Standards referred to in the regulations. See excerpts from Ch. 1 of Standards, attached, and affidavit of Kenneth M. Fischer of Peat, Marwick, attached.

The affiliates are required to submit their reports to PPFA, where they are reviewed for, inter alia, inclusion of the proper independent auditor's certificate.

The figures from those audited reports, if received at the time the application is filed, are used in the CFC statement. This covers 80%-90% of the total. Where reports have not yet been received, PPFA's financial office obtains figures from the affiliate for use in the statement. Those numbers are subsequently checked against the audited reports when received. There is no material difference between the totals as submitted in the statement and the totals based on all included reports. (See ¶ 3 of Lawrence C. Broadwell affidavit.)

In sum, the affiliate numbers are "estimates" only in the sense that they are, in a small fraction of the total, figures obtained prior to receipt of the affiliate's audited report. They are not projections or guesses, but are based on a careful compilation of figures from the affiliates, who in turn maintain their accounts in accordance with established accounting standards. Given the requirement to present figures covering the affiliates, this procedure is an appropriate one. (See Fischer affidavit.)

c. Why (or whether) is the data not audited or certified?

The data is developed from financial records maintained in full accordance with auditing and accounting standards.

The financial accounts of all Planned Parenthood affiliates are audited and certified by independent accountants. Planned Parenthood's bylaws require, as a condition of affiliation, that each affiliate undergo an independent annual audit. Each affiliate is required to send to PPFA a copy of its annual financial statement, duly certified, within six months of the end of the fiscal year. The Planned Parenthood national headquarters Financial/Administration Division reviews each of these reports: That review includes confirming compliance with the requirement of appropriate auditor certification. Those reports are stored in the Financial/Administration Division. (See Broadwell affidavit, ¶ 2.)

d. Is the audit in accord with accounting standards that satisfy the regulations?

Yes, as explained above, all affiliates are so audited.

There is no requirement either in accounting practice or in the CFC regulations for charities organized as Planned Parenthood is with autonomous affiliates and a national headquarters to have a single, unified audit nor to maintain a single integrated set of accounts. (See Fischer affidavit.) Any such requirement would be immensely expensive and would impact heavily not only on Planned Parenthood, but on many other federated charities participating in the campaign, notably the United Way. The accounting practices adopted by Planned Parenthood in respect of its affiliates are identical to those adopted by many major charities, such as the Leukemia Society, American Lung Association, American Diabetes Association, and the United Way.

* * *

In sum, the affiliate data were submitted in accordance with a requirement of the CFC regulations, they are based on careful accounting procedures within each affiliate that comply with applicable accounting standards, and they are estimates only in the sense that affiliate information comprising a small minority of the NB total is obtained prior to submission of its audited annual report. Therefore, PPFA's financial data as submitted comply with all the requirements of the regulations.

3. Is the 50% test met?

The 50% test and the 20% test are alternative. Section 950.405(a)(2)(iii) sets forth the requirement: "With the exception of voluntary agencies whose revenues are affected by unusual or emergency circumstances, as determined by the Director, [an applicant must have] received at least 50% of its revenues from sources other than the Federal Government or at least 20% of its revenues from direct and/or indirect contributions in the year immediately preceding any year in which it seeks to participate in the Combined Federal Campaign" (emphasis added). The relevant year for present purposes is, of course, 1982 -- not 1981 which is the year covered in the O'Reilly calculations. (The director of OPM, in fact, last year approved Planned Parenthood for CFC participation after reviewing the 1981 data which Mr. O'Reilly is questioning.)

Planned Parenthood meets this test, whether measured alone, or including the affiliates:

- PPFA itself does not, as is shown explicitly in its financial report for 1982, meet the 50% standard. It does, however, meet the alternative 20% test, as explained in detail below.

- When the affiliates are included, the 50% test is met. Only 31.8% of total support, counting both the national organizations and the affiliates, comes from the Federal Government. Counting the affiliates, the 20% test is also met, because public support is 21.95%.

As explained below, Planned Parenthood's treatment of items as federal or other than federal for purposes of the 50% test is correct and in accordance with the regulations.

4. Is the alternative 20% test met?

The alternative 20% test is met at both levels. The national figure is 33.24% of public support and with the affiliates counted, the level is 21.95%. (Inclusion of CFC contributions as a form of public support, which is criticized in the O'Reilly statement, is clearly in accordance with the regulations. In particular, the prescribed format for the Source of Funds and Costs Statement, attached, explicitly includes "federal service campaigns" as an element of total support from the public.)

Other issues relating to what is counted as public support are addressed in the following paragraphs, and show that the criticisms raised are all without foundation.

5. Is it proper to count in-kind contributions as public support under the 20% test?

The in-kind items which are counted as public support are materials, such as medical supplies and office equipment, and free or reduced rent for program activities. All these items have a readily ascertainable fair market value. Volunteer time is not counted as in-kind support.

By including these items in the total for public support, the affiliates are following the required practice under the standards of the accounting profession. The "Standards" require that donated materials of this kind be reported as contributions. (See page 22, attached.) In short, Planned Parenthood has followed established accounting practice in including these items. (See Fischer affidavit.)

6. Is it proper to count Medicaid receipts as non-federal support under the 50% test?

The format required by the regulations to be used for submission of the Sources of Funds and Costs report specifically requires that Medicaid payments be included in the category of "grants from state or local government agencies." Planned Parenthood has followed this practice, which is in accordance with the realities of the Medicaid program and with the fact that Medicaid payments received by a health care provider are in the nature of third party payments from a state agency, and not federal grants.

7. Is there compliance with the bar on "deceptive publicity"?

Planned Parenthood is recognized as meeting the highest standards of accuracy in charitable fundraising practices.

The applicable provision of the regulation requires that a CFC participant ensure "that its publicity and promotional activities are based upon its actual program and operations, are truthful and non-deceptive, and include all material facts." Planned Parenthood publishes a wide variety of materials to carry out its program purposes and its responsibility to report to the public (including past contributors) and to help raise funds.

Planned Parenthood's general publicity, informational, and fundraising materials accurately describe its programs and its policy concerns. In particular, Planned Parenthood in such materials makes clear that it supports the right of women to determine whether and when they wish to have children, and that in that connection, it supports the right of a woman to choose to have a safe abortion if that is her decision. This position is controversial to some critics, but it is supported by the majority of the American public and is in any event constitutionally protected.

The only specific question raised in this context in the materials provided to us relates to the description of Planned Parenthood's activities included in the CFC brochures. The statement used in 1982 was the same as has been used many times in the past without objection from OPM or anyone else. It reads as follows: "Support family planning services in over 100 countries worldwide to those who need it most and use it best. Emphasis on Latin America, Africa, and Asia."

This is an accurate statement: 65% of CPC receipts, net of fundraising costs, are used for direct support of PPFA's overseas programs. The balance is used for PPFA's general expenses, a substantial part of which are unreimbursed administrative costs of the overseas programs. Given these facts about how CPC funds are used, the words of the brochure are an entirely accurate, brief description.

The best evidence of the integrity of Planned Parenthood fundraising literature is its review by the two leading recognized independent agencies that certify the accuracy and fairness of charity promotional materials -- the Philanthropic Advisory Service of the Council of Better Business Bureaus and the National Information Bureau. (For the role of these agencies see attached letter of John J. Schwartz, President of American Association of Fund-Raising Counsel.) Planned Parenthood is recognized as meeting the standards of both agencies. In particular, the Better Business Bureau's Philanthropic Advisory Service's Standards for Charitable Solicitations require that "solicitations and informational materials distributed by any means be accurate, truthful, and not misleading." Planned Parenthood has been listed by the Service in August 1983, as in previous years, as meeting its standards for charitable solicitations, including the one quoted. It is also listed by the National Information Bureau as meeting their standards which include a requirement of "ethical publicity.".

This recognition by these two groups confirms the integrity and accuracy of Planned Parenthood's fundraising efforts.

8. Is interest on loan funds treated as public support?

No. All interest on loan funds, whether derived from borrowers on loans made, or from financial institutions on funds available for loan but not yet loaned, is treated as an element of investment income. It is therefore not included in the public support computation but in the "other income" category. (See Broadwell affidavit, ¶ 5.)

9.(a) Is what is shown as public support properly included under generally accepted accounting principles or applicable law?

Yes. For the reasons stated in detail above, the items treated as public support conform to CFC regulations, and the challenged items -- CFC receipts and in-kind material contributions are properly included. (See Questions 4,5, and 8.)

b. Does public support include any contributions that are not tax deductible because of the purpose for which given?

No. No such contributions were received in 1982, and therefore the public support figures could not possibly include any such amounts.

The apparent stimulus for this question is the charge raised in relation to a 1981 direct mail fundraising letter which could have been read as soliciting contributions that would be restricted to use in efforts to defeat certain legislation. The IRS takes the position that gifts so restricted are not tax deductible. In order to eliminate any possible question in the future, Planned Parenthood, after the 1981 letter was first questioned, has insured that its fundraising materials avoid any suggestion that contributions received pursuant to them will be earmarked for purposes of lobbying.

In sum, Planned Parenthood fully meets all the technical standards, and all of the questions raised are without merit. An exclusion of Planned Parenthood on purported "technical" grounds would be without legal basis.

State of New York) ss.
County of New York)

Lawrence C. Broadwell, being duly sworn, deposes and says:

1. My name is Lawrence C. Broadwell. I am Vice President, Finance and Administration, of Planned Parenthood Federation of America (PPFA), and head of its Finance/Administration division. As such, my responsibilities include the preparation of the Source of Funds and Cost Statement for the Planned Parenthood CFC application, and I am familiar with the details of the computations therein.

2. As a matter of national policy, Planned Parenthood requires in its bylaws, that each affiliate have "an annual audit prepared under AIPCA guidelines." In furtherance of that requirement, all affiliates are required to submit to the national headquarters within six months of the end of their fiscal year a copy of their audited financial report including the appropriate CPA certification. These reports are received and reviewed in my office. The review includes confirmation that the proper auditor's certification is present.

3. Where affiliates have reported, the information as submitted in their audited annual financial statements is used for the affiliate figures submitted with the CFC application. This accounts for about 80%-90% of the total. For affiliates for which annual audited reports have not yet been received when the CFC application is filed, my office obtains information from them for use in the CFC statement. The figures so obtained are subsequently checked against the final audited figures for those affiliates. In my experience, there has not been any material difference between the numbers used in the CFC statement and the final figures, based on all audited reports.

4. No items are included as public support in the Planned Parenthood statement for the CFC in 1982 which are not tax deductible because of the purposes for which given.

5. Interest on PPFA loan funds is included in "other income" in the statement, and is not counted as public support.

Lawrence C. Broadwell

Sworn to before me this 6th day
of September, 1983.

Notary Public

VIRGINIA C. [illegible]
Notary Public, State of New York
No. 31-4713.[illegible]7
Qualified in New York County
Commission Expires March 30, 19[illegible]

AFFIDAVIT OF

KENNETH M. FISCHER

1. My name is Kenneth M. Fischer, and I am a partner in the accounting firm of Peat, Marwick, Mitchell & Co. I have held that position for approximately four years and I have been a Certified Public Accountant for nearly ten years. For the last eight years, I have specialized in the area of not-for-profit organizations. I am the partner in-charge of our Firm's annual examination of the financial statements of Planned Parenthood Federation of America, Inc. ("PPFA").

2. Generally accepted accounting principles for Voluntary Health and Welfare Organizations are set forth in the revised 1974 AICPA Industry Audit Guide Audits of Voluntary Health and Welfare Organizations. I am also familiar with the Standards of Accounting and Financial Reporting for Voluntary Health and Welfare Organizations (revised 1974). These two documents state that they are intended to be in general conformity with each other. As stated in the Standards, "In a sense, the revised Standards and the revised audit guide are complementary publications. Each seeks to achieve uniform and responsible accounting and financial reporting. The revised audit guide defines broad accounting principles for the health and welfare field and procedures to be followed by independent public accountants in examining and reporting on an organization's financial statements. The revised Standards sets forth, in detail, standards for organizations to follow in preparing financial information for reporting to the general public based on the revised audit guide's accounting principles." Therefore, compliance with generally accepted accounting principles will, in most cases, also comply with the Standards.

3. I am not aware of any requirement under generally accepted accounting principles for PPFA to prepare audited combined financial statements for the parent organization and its affiliates. I have been informed that it was necessary for PPFA to prepare a combined financial statement to comply with Combined Federal Campaign (CFC) application requirements and that such combined financial statement was based on

the financial statements of the parent organization and the individual affiliates.

4. I am informed that PPFA in preparing the combined statement for its CFC application used audited financial statements of its affiliates, where available (which I am informed represented approximately 80% of the total public support and revenue) and used estimates, subject to subsequent checking by PPFA against audited financial statements to ascertain that no material discrepancy existed, where audited financial statements had not been received at the time the application was due.

5. I am further informed that in-kind contributions, such as medical supplies and rental space, are included in such combined statement as a contribution at fair market value when received.

6. While Peat Marwick cannot render an opinion or report on the combined statement, because Peat Marwick did not audit or review that combined statement, the procedure stated in paragraph 4 above, that I am informed was used in the preparation of such statement, is an appropriate and reasonable approach to the preparation of the combined statement and that the procedure stated in paragraph 5 above is in accordance with generally accepted accounting principles. In particular, the recording as a contribution of donated materials, space, or services where fair market value is determinable, is required under generally accepted accounting principles for organizations such as PPFA.

Kenneth M. Fischer
KENNETH M. FISCHER

Sworn to before me this
7th day of September, 1983

S. Roslyn Schnoll
NOTARY PUBLIC

S. ROSLYN SCHNOLL
Notary Public, State of New York
No. [illegible]
Qualified in Kings County
Certificate Filed in New York County
Commission Expires March 30, 19[illegible]

APPENDIX 20

September 9, 1983

ADDITIONAL PLANNED PARENTHOOD RESPONSES

In the conference Friday, September 2, with OPM General Counsel Morris and his Deputy, Mr. Levinson, it was clearly agreed that the administrative hearing to be held on Wednesday, September 7 would be strictly limited to the nine specific questions identified by them. They agreed at that time that those nine questions were the full set of "technical" matters of concern to Dr. Devine.

Despite that clear understanding, new questions were raised Wednesday, September 7, on entirely unrelated subjects.

Without waiving our objections to the procedure, but to make clear that Planned Parenthood has nothing to hide, the following answers are submitted to questions raised on Wednesday:

1. Question: In what category are funds reported to the IRS as lobbying shown?

Answer: The funds are allocated among functional divisions based on time spent and the subject matter. The largest amount is allocated to "Service to the Field of Family Planning."

2. Question: By what amount are affiliates' payments to PPFA reduced based on CFC receipts in the affiliates' areas?

Answer: About $25,000 in 1982; not 35% of the total as suggested in the hearing Wednesday. (Similar allowances are made for other PPFA fundraising in affiliates' areas.)

3. Question: Does Planned Parenthood Federation of America attempt to conceal that the Federation supports the affiliates?

Answer: No. PPFA's financial statement explicitly showed substantial amounts spent for support of the affiliates.

4. Question: Does Planned Parenthood attempt to conceal that the affiliates in some instances provide abortion services or abortion counselling?

Answer: It is ludicrous to contend that Planned Parenthood has concealed that abortion services are provided at some affiliate clinics and that counselling includes counselling on the availability of abortions, or that Planned Parenthood, both PPFA and the affiliates, supports the proposition that a woman should have a right to a safe abortion if that is her choice.

Planned Parenthood affiliates are subject to a variety of limitations on the use of Title X funds and certain restrictions also apply to PPFA's overseas programs. As has been exhaustively demonstrated in repeated audits by a variety of government agencies, both PPFA and the affiliates comply with those rules insofar as applicable to them. It is, however, entirely legal and proper to use private funds and other funds not subject to the special restrictions for abortion services and neither PPFA nor its affiliates have ever attempted to conceal the facts in that connection.

5. Question: Is it proper for PPFA to be listed in the CFC under its trademark "Planned Parenthood-World Population"?

Answer: Yes. The trademark "Planned Parenthood-World Population" is used for a variety of Planned Parenthood's fundraising for overseas efforts. It is used for the CFC because it has acquired a familiarity and recognition in the CFC campaign. The use of trademarks or common names in the CFC is not limited to Planned Parenthood-World Population. For example, CARE and Project Hope, both of which participate in the CFC under those names, are not the corporate names of the entities (which are respectively, the Cooperative for American Relief Everywhere, and People to People Health Foundation).

6. Question: Are funds received in response to the fundraising letter enclosed with the September 1 notice properly included as public support?

Answer: The issue for purposes of determining the accuracy of the Sources of Funds and Costs Report is not whether the funds shown as received from the public were tax deductible to the donors, but whether the funds were received from the public. In late 1981, questions were raised about the fundraising letter in question on the grounds that the letter could be read as restricting contributions in response to it to lobbying purposes and that the IRS position is that contributions so restricted would not be tax deductible. PPFA does not agree that funds received in response to that letter were restricted to lobbying. All funds received in response to that letter were in fact put into general funds of PPFA. Nor does PPFA necessarily agree that if funds received had been restricted to lobbying they would be non-deductible, since lobbying of the kind in question is entirely permissible for tax exempt charities under section 501(h) of the Internal Revenue Code. However, to avoid any question, Planned Parenthood took steps to ensure that its direct mail materials make explicit that contributions received in response to them were not restricted but were available for all purposes of PPFA. Since February, 1982, the form of letter attached to the September 1 letter has not been used.

The amounts received in response to that letter in 1982 were approximately $78,000. This amount is not material in the context of PPFA's 1982 direct unrestricted public contributions of $8,750,000.

In any event, the issue for the CFC is whether the funds shown are in fact received from the public, not whether they are tax deductible, and no question has been raised -- nor could it be -- that the funds are so received.